

No. 10382

United States
Circuit Court of Appeals
For the Ninth Circuit.

NATIONAL LABOR RELATIONS BOARD,
Petitioner,
vs.
LETTIE LEE, INC., a corporation,
Respondent.

Transcript of Record
In Two Volumes
VOLUME II
Pages 445 to 833

Upon Petition for Enforcement of an Order of the National
Labor Relations Board

FILED

MAY - 6 1943

No. 10382

**United States
Circuit Court of Appeals
For the Ninth Circuit.**

**NATIONAL LABOR RELATIONS BOARD,
Petitioner,
vs.
LETTIE LEE, INC., a corporation,
Respondent.**

**Transcript of Record
In Two Volumes
VOLUME II
Pages 445 to 833**

**Upon Petition for Enforcement of an Order of the National
Labor Relations Board**

DAVID ROBERT THAIN,

called as a witness by and on behalf of the respondent, having been first duly sworn, was examined and testified as follows:

Direct Examination

Q. (By Mr. Shapiro): State your full name, please.

A. David Robert Thain, T-h-a-i-n.

Q. Where are you employed?

A. Odessa, Texas.

Q. I asked you where you were employed?

A. Oh, I am very sorry.

Mr. Nicoson: That is an answer too.

Trial Examiner Erickson: Let him answer.

Mr. Shapiro: The witness obviously didn't understand what my question was.

Q. (By Mr. Shapiro): Where do you work now? A. Lettie Lee, Inc.

Q. What did you mean when you said "Odessa, Texas."

A. I thought you asked, where was I born.

Q. Are you related to Lettie Lee, one of the officers and owners of Lettie Lee, Inc.?

A. Pardon me. I didn't understand the question.

Mr. Shapiro: Will you read it, please?

(The question was read.)

The Witness: Yes.

Q. (By Mr. Shapiro): What is your relationship to her? [422]

(Testimony of David Robert Thain.)

A. She is my sister.

Q. How long have you been employed by Lettie Lee, Inc.? A. About four years.

Q. In what capacity? A. Cutter.

Q. Have you been a cutter throughout the period of your employment there?

A. No. I swept the floor when I first came there.

Q. How long have you been a cutter?

A. For about three and a half years.

Q. Were you a cutter, working at Lettie Lee, before Vito Cimarusti came to work there?

A. Yes.

Q. And before Angelo Castella? A. Yes.

Q. And before Mort Litwin? A. Yes.

Q. And before Joe Sardo? A. Yes.

Q. And before Louis Baliber? A. Yes.

Q. And before Don Quinn? A. Yes.

Q. And before Nolan Berteaux?

A. Yes. [423]

Q. And were you also there before Miss Lembke?

A. Yes.

Q. And Dorothy Richard? A. Yes.

Q. And Eunice Usher? A. Yes.

Q. In other words, you are the oldest cutter in the employ of Lettie Lee; is that correct?

A. That's right.

Mr. Nicoson: I object to that.

Mr. Sokol: That is immaterial. The question is: Was he employed on the date of the request for bargaining.

(Testimony of David Robert Thain.)

Mr. Shapiro: We will get to that.

Mr. Sokol: Let's get to it in the proper way.

Mr. Nicoson: Yes, let's not have the witness give his conclusions.

Mr. Sokol: Will you stipulate, before we go any further—

Mr. Nicoson: I don't know whether I will or not.

Mr. Sokol: I want a stipulation that Miss Lembke was not employed on the respective date of attempts to bargain.

Mr. Nicoson: The payroll shows it, and the payroll is in evidence.

Mr. Sokol: Is that in evidence?

Mr. Nicoson: Yes.

Mr. Sokol: That is all right then. [424]

Q. (By Mr. Shapiro): Did you go on a leave of absence in the early part of 1941?

Mr. Nicoson: I object to that. It is leading.

Trial Examiner Erickson: Sustained.

Mr. Nicoson: It is certainly suggestive of the answer to this witness.

Q. (By Mr. Shapiro): Did you work at Lettie Lee in January of 1941?

A. In January of 1941?

Q. Yes. That is a year ago. A. Yes.

Q. Did you leave your employment at Lettie Lee at any time during that month? A. Yes.

Q. Where did you go?

A. To Odessa, Texas.

(Testimony of David Robert Thain.)

Q. Why did you go?

A. I went for a change, and my mother has a ranch down there, so I spent some time there and helped her out.

Q. Did you engage in any other employment after you left Lettie Lee in January, 1941?

A. No.

Mr. Sokol: He said no. He said he had a ranch.

Mr. Shapiro: He didn't say any such thing.

Trial Examiner Erickson: Now, listen. Proceed with the [425] questioning. No bickering between the attorneys.

Mr. Sokol: Pardon me.

Q. (By Mr. Shapiro): Did you have any conversation or discussion with any officer of Lettie Lee, prior to the time that you took your leave of absence? A. Mr. Bothman.

Mr. Sokol: I object to that on the grounds it is self-serving, especially between a—

The Witness: As a matter of fact, I had.

Mr. Nicoson: Time out.

The Witness: Sorry.

Mr. Nicoson: As a matter of fact, there is nothing in the record to show that he went on a leave of absence.

Trial Examiner Erickson: Sustained.

Q. (By Mr. Shapiro): How long did you remain away? A. Less than a year.

Q. When did you return?

A. In December.

(Testimony of David Robert Thain.)

Q. Of 1941? A. Of 1941.

Q. Did you receive any employment or compensation from any source while you were gone?

A. No.

Q. Did you tell anybody you were going?

A. Yes. [426]

Mr. Sokol: I object to that as immaterial.

Trial Examiner Erickson: Sustained.

Mr. Shapiro: If your Honor please, I think we have a right to establish that the man took a leave of absence.

Mr. Nicoson: I object to this instruction of the witness by means of argument. It is certainly most unethical.

Mr. Shapiro: I resent that.

Mr. Nicoson: Let's let the witness leave the room, if you want to make a speech about it.

Mr. Shapiro: All right. Let him leave the room.

Trial Examiner Erickson: Proceed with the examination now.

Mr. Shapiro: Is your Honor ruling that I am not permitted to ask him?

Trial Examiner Erickson: I ruled on the form of the question.

Mr. Shapiro: I beg your pardon?

Trial Examiner Erickson: I ruled on the form of the question.

Q. (By Mr. Shapiro): Did you have any discussion or conversation with anyone before you left in January concerning the reasons for your leaving?

(Testimony of David Robert Thain.)

A. Yes.

Mr. Sokol: Just a moment. Oh, I will wait.

Q. (By Mr. Shapiro): With whom did you have that? [427]

A. Mr. Bothman.

Mr. Sokol: I object to that.

Trial Examiner Erickson: Why?

Mr. Sokol: On this ground, that the only fact in issue is: Was he employed on the dates of the requests for bargaining, and the record is clear that he wasn't.

Trial Examiner Erickson: The objection is overruled.

Q. (By Mr. Shapiro): With Mr. Bothman?

A. Yes.

Q. Will you state the conversation?

A. Well, I went to Mr. Bothman, and I said that my health was rather slipping and it would do me good to have a change, and since my mother had this place down in Texas, and I was very welcome to come there, why, I decided to do that. But first I wanted to make sure that I would be able to come back to work if I wanted to. And he assured me that that was the case, that no matter how long my leave of absence was, that my job would still be waiting for me.

Q. And when you returned from Texas, did you go back to work at Lettie Lee? A. Yes.

Q. Have you been asked to join this Cutters local? A. No.

(Testimony of David Robert Thain.)

Q. Will you state to the Court what duties you were performing at Lettie Lee immediately prior to your leaving in January, [428] of 1941?

A. I was a regular cutter.

Q. State what your duties were. What did you do?

A. Well, usually the orders were written up by a girl and handed to me, the number of dresses, and the sizes, and the style. After determining the style which I was supposed to cut, I would go to the marker hangers and get the marker, mark that particular style, and I would get the pattern, bring the marker back, unroll the full size I was to cut, determine the length of material, lay up the material, and cut it out. If it were five ply I cut it with the shears; if it were over five ply, I usually used the round knife machine.

Q. All right. Anything else that you did?

A. Well, of course, there is always a certain amount of detail to a dress, like trim, and all that, for which you don't have markers. Therefore, it is necessary for every cutter to mark that out on the cloth, or on paper, and finish up the dress.

Q. And did you do that trim too?

A. Well, yes.

Q. Did the other cutters do the same work?

A. Yes.

Q. Did Kathryn Lembke and Eunice Usher—

A. Exactly the same work.

Q. ——do the same work as you did? [429]

(Testimony of David Robert Thain.)

A. Exactly the same.

Q. Did they do the same work that the other men cutters did? A. Exactly.

Mr. Shapiro: That is all.

Cross Examination

By Mr. Nicoson:

Q. What did you do while you were in Texas?

A. I went hunting and fishing, and built a little fence.

Q. What did you do around the ranch?

A. Just ordinary things that anyone would do around any ranch or home.

Q. Such as?

A. Milk the cow and feed the chickens.

Q. What else?

A. Well, it is rather hard to explain—everything I did.

Q. Why is it hard to explain, Mr. Thain? You did them, didn't you? A. Well, yes.

Q. Then why can't you explain them?

A. What do I do when I go home, after I am through working now?

Q. I don't know.

A. What do you do?

Q. I am not interested in what you do now. I am interested in [430] when you were at a ranch in Texas.

A. Well, I did exactly the same things I do now.

(Testimony of David Robert Thain.)

A. Oh, you did? A. Right.

Q. You cut garments down there in Texas?

A. No.

Q. On the side of a cow?

A. You said when I am home.

Q. I am talking about when you were helping or working for your mother on a ranch in Texas, and you understand that too, don't you?

A. I think so.

Q. What did you do to help your mother on the ranch in Texas? A. Well, I—

Q. Is that all you did, milk the cow and feed the chickens? A. Just about.

Q. Those are the ordinary things you did while you were on the ranch in Texas? A. Yes.

Q. Is that a lot of help to your mother?

A. She thought so.

Mr. Shapiro: I object to it as argumentative.

Trial Examiner Erickson: Sustained.

Q. (By Mr. Nicoson): You say you came back in December, 1941? [431]

A. That's right.

Q. How did you happen to come back?

A. Because I wanted to.

Q. Is that the only reason? A. Yes.

Q. Ever have any conversation with Mr. Bothman about coming back? A. Sure.

Q. When? A. Before I left.

Q. Nothing before you came back? A. No.

Q. You knew that you would get a job when you came back, under any conditions, didn't you?

(Testimony of David Robert Thain.)

A. Certainly. I had already had that understanding.

Q. You are the brother of Lettie Lee, and you can get a job there any time you want?

A. I imagine so.

Mr. Nicoson: That is right. I think that is all.

Cross Examination

Q. (By Mr. Sokol) Naturally, you weren't there at the time of the strike in July,—

A. No.

Q. ——1941?

A. No. I was away at the time. [432]

Q. So you don't know anything about what kind of work Eunice and Miss Lembke did—

A. I know of the kind of work they did before that.

Q. Wait a minute. Let me complete my question.

(Continuing) You don't know what kind of work they did during the year 1941?

A. No, I wasn't there.

Q. By the way, in what year did you first come there? A. About, approximately '36.

Q. You remember in 1936 that there was a strike of the garment workers?

A. We had no strike at our place.

Q. Do you remember in 1936 that there was a group of manufacturers got together, including Lettie Lee, and formed a group known as the South-

(Testimony of David Robert Thain.)

ern California Garment Manufacturers Association?

Mr. Shapiro: Just a moment.

The Witness: I don't know anything about that.

Q. (By Mr. Sokol) Did you work in the office at any time? A. No.

Q. Did Mr. Bothman discuss the Cutters local of the International Ladies' Garment Workers' Union with you? A. Never.

Q. Never mentioned it to you? A. Never.

[433]

Q. He said he spoke about it around at the plant. Did you hear him? A. No.

Q. You didn't. Now, didn't you tell Angelo Castella that you were quitting the job?

A. No.

Q. You didn't? A. No.

Q. Were you notified by Mr. Bothman that the Cutters local of the International Ladies' Garment Workers' Union was requesting that he bargain with them? A. No.

Q. You weren't? A. No.

Q. You at no time told him that you wanted to be included in the event of any bargaining; is that right? A. No, never did discuss it.

Mr. Sokol: That is all.

Redirect Examination

Q. (By Mr. Shapiro) One further question, Mr. Thain: Did you work at Lettie Lee some part of the month of January, 1941? A. Yes.

(Testimony of David Robert Thain.)

Q. For what part of that month did you work there?

A. Well, I left there the 15th, I believe. Yes, the 15th. [434]

Q. Do you know what kind of work Eunice Usher and Kathryn Lembke were doing in the month of January before you left?

Mr. Nicoson: I object to that is immaterial and irrelevant.

Trial Examiner Erickson: Overruled.

Q. (By Mr. Shapiro) Do you understand the question?

A. I have worked—I can't remember dates on these things. I have worked with all of these people that were there, and they have always done exactly the same type of work that I have, but I can't remember what they were doing in January.

Mr. Nicoson: I move to strike out the answer because of its indefiniteness.

Mr. Shapiro: I submit, your Honor, it is a complete answer to the question.

Trial Examiner Erickson: It will stand.

Mr. Shapiro: Nothing further.

Recross Examination

Q. (By Mr. Sokol) What was Eunice Usher doing in January, 1941?

A. I just told you that I didn't remember exactly. I don't even know——

Q. Let's get a little closer to home.

A. I don't even know if she was there in January or not.

(Testimony of David Robert Thain.)

Mr. Nicoson: That is what I thought. Go ahead.

Q. (By Mr. Sokol) How about more recently? When was the [435] last time you saw her working?

A. Well, she was employed there when I came back in December.

Q. All right. Now, what was she doing in December? A. Cutting.

Q. What? A. Dresses.

Q. What kind of dresses?

A. Silk dresses, wool dresses, flannel dresses, all kinds of dresses.

Q. What did she do?

A. What did she do?

Q. Yes. A. She cut dresses.

Q. What did she do? That doesn't tell us anything. Give us the details of the work she did.

A. All right.

Q. Not what you did there.

A. Well, she did exactly the same thing I did.

Q. I am asking you, do you know, did you observe what she did? Did you see her at work?

A. Why, certainly.

Q. And you stood there and watched her work-

A. I passed by her table every day.

Q. How many times every day did you pass by her table? [436]

A. A hundred; maybe more.

Q. At what table was she at in December, 1941?

A. She works at the second table from the south wall, the partition wall.

(Testimony of David Robert Thain.)

Q. In December she worked at the second table— A. That's right.

Q. —from the south wall?

A. The south partition wall.

Q. In December did she do any sloping? Did you see her do any sloping? A. Yes.

Q. Did you do sloping? A. Yes.

Q. Did you do trimming? A. Yes.

Q. And she did trimming? A. Sure.

Mr. Sokol: Well, you are the expert on that, Mr. Nicoson. I have nothing further.

Mr. Nicoson: That is all. I don't have any more questions.

Q. (By Trial Examiner Erickson) What about Baliber? A. I beg pardon?

Q. Did Baliber do sloping and trimming?

A. May I explain that in my own words, sir?

[437]

Q. Yes.

A. You see, as I already explained, every cutter has a certain amount of that to do. There is no one person, at least in our lineup, that is designated just to sloping, or just to do the other thing.

I oftentimes cut duplicates, whereby it is necessary for me to make my own markers, although we have a man who does nothing else but make markers. But it is always necessary for a cutter, though he has a marker for a part of the dress, it is always necessary for him to do some marking and some sloping on a particular style he happens to be working,

(Testimony of David Robert Thain.)

rather than to give it to a new person, who don't know oftentimes all the details, so oftentimes it entails sloping and the person who does the cutting, he does the whole thing.

Q. Don't you have one employee there known as the sloper?

A. No, we don't. We don't have anyone that does only that.

Q. Maybe not only that, but she is known as a sloper, isn't she?

A. No, sir. I don't know—

Q. Rather than a cutter? A. No.

Q. You don't have any such person?

A. No. [438]

Q. Didn't you ever have anyone, in your experience at Lettie Lee?

A. I have never known anyone who just sloped and did nothing else.

Q. Well, these girls that you have mentioned, did they do the same type of work that Baliber and the rest of the employees named in the complaint did— A. Yes, sir.

Q. —prior to the strike?

A. Yes, sir. There is positively no difference in the work that they did then or that they do now.

Mr. Nicoson: May I have that question and answer read, please?

Trial Examiner Erickson: Yes.

(The question and answer were read.)

Trial Examiner Erickson: You may have the witness.

(Testimony of David Robert Thain.)

Q. (By Mr. Nicoson) You don't know what they were doing prior to the strike, do you?

A. Well, while—

Q. You weren't there, were you?

A. I wasn't there.

Q. You weren't there from January, the middle of January, up until December, is that true?

A. You said before the strike, didn't you?

Q. That is right. [439]

A. Before the strike, I didn't know what they were doing?

Q. Before the strike, that is right.

A. They were employed there when I was employed, when I left in January.

Q. Can you say, of your own knowledge, that you knew what Kathryn Lembke and Eunice Usher were doing on June 1, 1941?

A. No. That was during the period that I was away.

Q. You don't know that. So you don't know what they did between January and December, do you, of your own knowledge?

A. Between January and December?

Q. 1941. A. No.

Mr. Nicoson: That is all. Thank you very much.

Q. (By Mr. Sokol) Did you get any wages in October, 1941? A. In October 1941?

Q. Yes. A. No.

Q. You weren't there in October, 1941?

(Testimony of David Robert Thain.)

A. No.

Mr. Sokol: That is all.

Mr. Shapiro: Nothing further.

Trial Examiner Erickson: I see you have the payroll there in front of you, Mr. Sokol. Is Mr. Thain's name listed with the other cutters in that group that Mr. Bothman [440] testified to yesterday?

Mr. Shapiro: May I answer that? It is, your Honor, and the blotter marks the place where his name appears.

Mr. Sokol: In January, you mean?

Mr. Shapiro: Yes, in January.

Trial Examiner Erickson: I mean, his name continues right through then until the following December?

Mr. Nicoson: No, it does not.

Mr. Shapiro: Not as having received pay.

Trial Examiner Erickson: Well, there is a line, as I understand it, that runs right through the book, that would have been his, if he had been listed?

Mr. Shapiro: I think Mr. Bothman can explain that. He is more familiar with the book than I am.

Mr. Nicoson: Let's find out what the payroll here shows.

Mr. Shapiro: You will recall that yesterday Mr. Bothman testified that he thought that Mr. Thain's name did not appear in the 1941 ledger, because he thought possibly he had left in 1940, and that his name had not been carried into the 1941 records, but his name is there.

(Testimony of David Robert Thain.)

Trial Examiner Erickson: Now what position does he occupy in that group of names? That is, what number is his name?

Mr. Shapiro: Show us this, will you, Mr. Bothman? [441]

Mr. Nicoson: As a matter of fact, if you want me to check from the record, I am now examining the payroll and Mr. Thain does not show on the payroll commencing on March 28, 1941. The payroll from January 1st up to March 28, 1941 shows that Mr. Thain last worked in the week ending January 17, 1941. From there on up until March 28th there is a blank space, at which time, on March 28th, his name is dropped entirely from the payroll.

Trial Examiner Erickson: All right. That is what I wanted to know. Step down.

(Witness excused.)

Mr. Shapiro: Your Honor wanted to know under what classification or grouping he appeared. In January, 1941 he appeared as the fourth name under the cutters.

Trial Examiner Erickson: That is right. But he is dropped from the payroll as of that March date?

Mr. Nicoson: That is right.

Mr. Shapiro: He isn't dropped.

Trial Examiner Erickson: I mean, in accordance with the testimony that was given yesterday?

Mr. Shapiro: After March, apparently, his

name does not appear on the payroll for the reason that has been given.

Trial Examiner Erickson: Wasn't the testimony yesterday that any person that was considered an employee was still carried in that block of names?

[442]

Mr. Bothman: Not necessarily.

Mr. Shapiro: Not necessarily.

Trial Examiner Erickson: All right. Proceed. The record will show.

Mr. Shapiro: I will clear that up with Mr. Bothman when I put him on. I will call Mr. Litwin.

MORTIMER LITWIN

called as a witness by and on behalf of the respondent, having been first duly sworn, was examined and testified as follows:

Direct Examination

Q. (By Mr. Shapiro) Will you state your name, please?

A. Mortimer Litwin, L-i-t-w-i-n.

Q. Where are you employed?

A. Lettie Lee, Inc.

Q. How long have you been working there?

A. Approximately three and a half years.

Q. Has that been continuously? A. Yes.

Q. Were you working there in the months of June and July, 1941? A. Yes.

(Testimony of Mortimer Litwin.)

Q. Were you working there on July 24, 1941 when a strike was called? A. I was.

Q. In what capacity were you employed in June and July of [443] 1941?

A. As a marker and cutter.

Q. Now, will you state to the Court what you mean by a marker?

A. Well, those different parts of the dress are placed on the strip of paper, the width of the material to be cut, and marked in in a certain way so as to take the least amount of material. And usually carbon copies of this principal marker is made, of each size, and is rolled up for future use by the cutters.

Q. Do all of the cutters make marks or markers?

A. Yes, they sometimes do.

Q. Was there any particular cutter who was assigned to make most of the marks?

A. That was me.

Q. You say you are also a cutter?

A. That's right.

Q. Will you state what you did, what services you performed as a cutter?

A. Well, when the marks were completed, or I hadn't anything to do at that time, any more marking, I did cutting, essentially the same as the other cutters did or are doing.

Q. Now, will you state to the Court what operations you performed in cutting a dress? Start in from the very first operation. [444]

A. Well, a piece of paper was rolled down on a

(Testimony of Mortimer Litwin.)

long table the width of the material to be cut, and the material was placed on this paper, evened off on both sides, and the markers placed on top of the material, weighted down, and then cut out with a shears or a knife, depending upon the amount of ply, and the dress was then rolled up and sent to the assorting tables.

Q. Do you know Eunice Usher? A. I do.

Q. Do you know Kathryn Lembke?

A. I do.

Q. Do you know Dorothy Richard?

A. I do.

Q. What work did they do at Lettie Lee?

A. They do cutting.

Q. Will you state to the Court what work these girls did, and describe it.

Trial Examiner Erickson: At what time do you mean now, Mr. Shapiro?

Q. (By Mr. Shapiro) Let's first take the period immediately preceding July 24, 1941. That would be the day before the strike.

A. Well, they did cutting then, as now.

Q. All right. Tell us what they did.

A. Well, they rolled out their paper and laid out their [445] material, according to their tickets, style number, color, and size, and they went for those markers which I made, in those bins there, and putting the correct size on the material, they weighted it down, and they cut it then either with the machine or with the knife. And after it was all cut up, they would bundle it up and send it down

(Testimony of Mortimer Litwin.)

to the assorters, and if there was any trimmings to be cut, after the dress as a whole was cut out, they did that too.

Q. Did the girls cut any trims?

A. They did.

Q. Did they do any sloping?

A. They did that too.

Q. Did the men cutters cut any trims?

A. Yes, sir.

Q. Did they do any sloping?

A. They did.

Q. Did the men cutters do any other or different type of work than the girls? A. No.

Q. Now, directing your attention to the 11th day of June, 1941, did you attend the meeting at the cutting room of the plant at about 4:30?

A. I did.

Q. Who else was there?

A. The rest of the cutters, and Mr. Bothman.

[446]

Mr. Nicoson: I object. That is not an answer. Let him state the names.

Q. (By Mr. Shapiro) Well, give us the names of them.

A. Well, Vito, Sardo, Baliber, Quinn, and Castella, and another fellow there, Nolan, and Mr. Bothman, and myself, and Lou Swartz.

Q. Were any of the girls there?

A. No, they weren't.

Q. By the way, do you belong to this Cutters local? A. I do not.

(Testimony of Mortimer Litwin.)

Q. Were you asked to join?

A. No. I wasn't asked to join.

Q. Now, what was the purpose or the occasion for this meeting of June 11, 1941?

A. Well, the boys banded together for an increase in salary, and they got Mr. Bothman, they wanted to see if he would give it to them.

Q. Did they tell you that there was going to be a meeting at that time for that purpose?

A. There may have been something hinted. I am not sure.

Q. But, in any event, you were there?

A. I was there at the meeting.

Q. Will you state, in substance, what was said at that meeting?

A. Well, the boys asked for an increase in salary, and Mr. [447] Bothman said——

Q. Just a minute. You said, "The boys." They didn't all talk at once, did they? Or, who was the spokesman? Tell us who spoke and what he said.

A. I believe Mr. Sardo was the spokesman.

Q. What did he say?

A. He asked for an increase in salary on behalf of the boys.

Q. To whom did he address that remark?

A. Mr. Bothman.

Q. What did Mr. Bothman say?

A. Well, he said he would either give them an increase in salary, or he wouldn't put on an extra man when it got busy and pay them time and a half for overtime.

(Testimony of Mortimer Litwin.)

Q. Was there anything else said at that meeting by anybody?

A. No, there wasn't anything.

Q. Was there any decision arrived at at that meeting, as to what form of increase the boys would take? A. Not at that meeting.

Q. Was there anything said by Mr. Bothman about any union at that time? A. No.

Q. Was there anything said by anybody about a union? A. No.

Q. Did Mr. Bothman state that the union were a bunch of [448] shysters?

A. I don't recall any such statement.

Q. You don't remember any conversation about unions? A. No.

Q. All right. Do you remember a meeting a day or two later? A. Yes.

Q. And where was that?

A. In the same place, at about the same time.

Q. And who was present?

A. The same members as at the first meeting.

Q. Will you state the conversation?

A. Well, the boys had decided and spoke through Mr. Sardo that they wanted—they preferred the increase in salary to the other alternative, and Mr. Bothman said that was perfectly all right, starting from, I believe next week, that the increase would be effective.

Q. Did he say how much the increase would be?

A. Yes, he did.

(Testimony of Mortimer Litwin.)

Q. What did he say?

A. He said the pay would be increased 15 cents an hour.

Q. What did the boys say, if they said anything?

A. They seemed satisfied with the amount.

Mr. Nicoson: I object to what they seemed.

Trial Examiner Erickson: Sustained. [449]

Mr. Nicoson: I move to strike the answer as not responsive.

Trial Examiner Erickson: It may be stricken.

Q. (By Mr. Shapiro) Will you state what they said, rather than your conclusion?

A. They said that would be all right.

Mr. Nicoson: I object to that, unless he indicates who said it.

Q. (By Mr. Shapiro) Do you remember who said it?

A. Well, since he was speaking to Mr. Sardo, Mr. Sardo said that, I believe.

Q. Did anything else take place at that meeting?

A. I believe Mr. Bothman asked them if any of them belonged to the union.

Q. Was that before or after he told them that they could have an increase of 15 cents an hour?

A. That was after.

Q. Did Mr. Bothman state that if any of the boys joined the union, they could not have the raise?

Mr. Sokol: Just a moment. I object to that.

Mr. Nicoson: I join in the objection as being leading.

(Testimony of Mortimer Litwin.)

Trial Examiner Erickson: The objection is overruled.

The Witness: No, he did not.

Q. (By Mr. Shapiro) Did Mr. Bothman state that if any of the boys joined a union that they would be fired or would [450] lose their jobs?

A. No.

Mr. Nicoson: I object to that, for the same reason.

Trial Examiner Erickson: Are you now propounding questions that are supposed to have been answers heretofore given by other witnesses for the Board?

Mr. Shapiro: Yes, your Honor.

Trial Examiner Erickson: He may answer.

Mr. Sokol: But it is not a correct question.

Mr. Nicoson: No, certainly, and doesn't even purport to be.

Trial Examiner Erickson: That is what I asked you. He may have his notes there, and is that the testimony that was given?

Mr. Shapiro: Do I understand you correctly: Did you mean that as to the boys who went on strike, did they testify that Mr. Bothman said those things?

Trial Examiner Erickson: Yes, in those words.

Mr. Shapiro: No, not in those words.

Trial Examiner Erickson: Then reframe your question.

Mr. Nicoson: I move to strike it out.

Trial Examiner Erickson: It will be stricken.

(Testimony of Mortimer Litwin.)

Q. (By Mr. Shapiro) Outside of asking the boys if any of them belonged to the union, did Mr. Bothman say anything else about the union? [451]

A. No, he did not.

Q. Did you go out on the strike?

A. I didn't come back to work the day the strike was called.

Mr. Nicoson: I object to that as being unresponsive.

Trial Examiner Erickson: Just answer the question, please.

Mr. Nicoson: I move to strike out the answer.

Trial Examiner Erickson: It may be stricken.

The Witness: Yes, I did.

Q. (By Mr. Shapiro) When did you return to work?

A. I believe it was three or four days later. I am not quite sure.

Q. And you worked continuously since?

A. I have.

Mr. Shapiro: You may cross examine.

Trial Examiner Erickson: We will recess for five minutes.

(A short recess was had.)

Trial Examiner Erickson: The proceeding will come to order.

Mr. Shapiro: He is your witness, counsel.

Cross Examination

Q. (By Mr. Nicoson) What were you doing on July 24, 1941? A. Marking and cutting.

(Testimony of Mortimer Litwin.)

Q. Did you do any marking and cutting that day? [452] A. Undoubtedly.

Q. Undoubtedly. You are sure you did?

A. Why, sure.

Q. You are positive about it? As a matter of fact, that was the day of the strike, wasn't it?

A. I don't recall dates. I just assumed I was working.

Q. If it was the date of the strike, you didn't do any marking and cutting on that day, did you?

A. Correct.

Q. That is right. Now, let's go back to June, 1941, and you tell me where Eunice Usher was working in that month.

A. June, 1941. She was on the other end of the table she is working on right now.

Q. And where is that table located?

A. That is the second table from the south partition.

Q. Did you say "south partition"?

A. That's right.

Q. Now, which is the south partition?

A. Second from the south—

Q. Of the partition? A. That's right.

Q. There is only one partition there, isn't there?

A. Yes.

Q. How much of the time would you say that these girls performed cutting operations at that time? [453]

A. Oh, possibly four-fifths of their time.

(Testimony of Mortimer Litwin.)

Q. Four-fifths of their time. How much of the garment has to be sloped?

A. Well, it depends on the garment and the style. On the styles where there is sloping, there is usually a front that comes back, a tucked front or a pleated skirt, that has to be sloped.

Q. When Miss Lembke said a while ago on the witness stand that the biggest portion of her time was devoted to cutting of these paddings, and the like of that, her statement was incorrect, is that so?

A. Well, she cuts dresses and she cuts paddings.

Q. Well, tell me, is it true or not?

A. It's true.

Q. It is true? A. Yes.

Q. What she said is true? A. Yes.

Q. That's right. Then it would not be four-fifths of the time; would it? A. No.

Q. I believe you said something about the second meeting that you had with Mr. Bothman concerning the raise, that he said it would be effective as of the next week?

A. Approximately, yes. [454]

Q. What do you mean, approximately?

A. I don't remember whether it was effective the next day or the next week; certainly, not longer than that.

Q. I am not asking you as to when it was, but I am asking you what he said about it.

A. I believe he said the next week.

Q. But, as a matter of fact, you got it that week for the entire week, didn't you?

(Testimony of Mortimer Litwin.)

A. Yes, we did.

Q. Now, when did you go back to work after the strike, did you say?

A. Three or four days after.

Q. As a normal thing, prior to the strike the biggest portion of your time was taken up in marking, wasn't it? A. The biggest portion, yes.

Q. About how much would you say? Three-fourths? A. Three-fourths.

Q. And the rest was cutting? A. Cutting.

Q. Now, what are you doing?

A. The same thing as I was doing then, marking and cutting.

Q. Let's begin with the week of the strike. Rather, let's take the week after the strike began, so that we can get a full week, and did you do more cutting in that week than you did prior to that time? [455] A. No.

Q. You worked some 79 hours that week, didn't you? A. That's right.

Q. And would you say that all of that 79 hours was devoted, three-fourths of it, to marking?

A. No, it wasn't.

Q. As a matter of fact, your cutting, your actual cutting duties, were increased considerably on account of the strike, weren't they? A. Yes.

Q. So that at least half of your time was devoted to cutting? A. That's right.

Q. Right. Whereas previous to that you did not devote so much time to it?

A. For a very good reason.

(Testimony of Mortimer Litwin.)

Q. I beg your pardon?

A. For a very good reason.

Q. I am not asking you for the reason at the moment. I am asking you what the facts were.

A. That's right.

Mr. Shapiro: May I suggest that the witness be allowed to give his reason now?

Trial Examiner Erickson: You will have the witness again. [456]

Mr. Nicoson: I am going to object to counsel trying to instruct the witness on cross examination. This is about the third time. I think he should be admonished.

Trial Examiner Erickson: Proceed.

Q. (By Mr. Nicoson) Since that time you have worked considerable overtime, haven't you?

A. Yes.

Q. And during that overtime your actual cutting performance has been materially increased over what it was prior to the strike; that is true, isn't it?

A. Correct.

Q. So that at the present time you are devoting at least half of your time to cutting?

A. That is correct.

Mr Nicoson: That is all.

Cross Examination

Q. (By Mr. Sokol) Mr. Litwin, you lived on July 24, 1941 at 6226 Drexel Avenue?

A. That is right.

Q. With Mr. Swartz?

A. That is right.

(Testimony of Mortimer Litwin.)

Q. You were out on strike? You came out on the strike? A. I was out, yes.

Q. And you got paid by the company for the days that you were out on strike, didn't you? [457]

A. No, I don't believe I did, as I recall it.

Q. You went up to the union headquarters, didn't you? A. I was there.

Q. Well, you didn't get paid for July 24th, but you got paid for the other days that you were out on strike, didn't you?

A. I don't recall getting paid for the days I was out on strike.

Mr. Sokol: That is all.

Redirect Examination

Q. (By Mr. Shapiro) Mr. Litwin, is cutting trim and paddings a part of the operation of the cutting trade? A. It is.

Q. You testified on cross examination that there was a reason why you spent more time cutting after the strike and less marking, than before.

A. I did.

Q. Will you state the reason?

A. Well, since there was less cutters in the cutting room at the time, making one mark or a set of markers necessitated cutting up the orders for that mark, and would take more time doing the cutting than it would just marking.

Mr. Shapiro: Will your Honor bear with me just a moment?

Trial Examiner Erickson: Go ahead. [458]

(A short interruption.)

(Testimony of Mortimer Litwin.)

Q. (By Mr. Shapiro) What was the reason that you had more time for cutting after the strike than you had before?

A. Well, in order to get out the same amount of work, there would naturally be more cutting for me than marking, since the other boys weren't there to do it; and, well, there is always more cutting than marking.

Mr. Shapiro: Your Honor, if I may go back to a subject that I developed on direct, I have checked my notes since and I think I can confine myself to the Board's limitations.

Trial Examiner Erickson: You may.

Q. (By Mr. Shapiro) At the first meeting on June 11th did you hear Mr. Bothman state: "How many of you boys belong to the union"?

A. Not at the first meeting.

Q. At the first meeting did you hear Mr. Bothman state, "The union are a bunch of shysters and they are not out to help you"? A. No.

Q. Did you hear Mr. Bothman state in the first meeting, "They are only out to help themselves"?

A. No, I didn't.

Q. Did you hear Mr. Bothman state that "the union would put in more cutters, and in that way you won't get as much work as you are getting now"? Did you hear him state that at the [459] first meeting? A. No.

Q. Did you hear Mr. Bothman state at the first meeting that he will close his shop before he operated under the union? A. No.

(Testimony of Mortimer Litwin.)

Mr. Shapiro: That is all.

Recross Examination

Q. (By Mr. Nicoson) Did you hear him say that at the second meeting?

A. No, he didn't say that.

Q. What did he say at the second meeting?

A. He asked the boys if they belonged to the union, to any union.

Q. Was that all? A. That is all.

Q. You are sure that took place at the second meeting? A. At the second meeting.

Q. Do you have any knowledge as to why he asked that question? A. No, I haven't.

Q. Did you ever discuss the union with him?

A. I did not.

Q. At no time? A. At no time. [460]

Q. Had you discussed the union with Mr. Swartz? A. No, I haven't.

Q. You are a relative of Mr. Swartz, aren't you?

A. I am.

Q. You are his brother-in-law?

A. That is right.

Q. And you live with him all the time?

A. I do.

Q. And you did at that time? A. I did.

Q. Mr. Swartz is your foreman, is he not?

A. That is right.

Q. How long does it take to become a marker?

A. Oh, a year or so, or six months. It depends on the individual.

(Testimony of Mortimer Litwin.)

Q. A year or six months? A. Yes.

Q. How long does it take to learn how to grade a pattern?

A. Well, that is a little more complicated. I would say a year to three years.

Q. A year to three years? A. Yes.

Trial Examiner Erickson: Speak up.

The Witness: Yes, a year to three years.

Q. (By Mr. Nicoson) How long does it take to learn how to [461] run a power knife?

A. Two to three months.

Q. How long does it take to learn to properly mark a piece of cloth?

A. Oh, three or four months.

Q. Anyone can do it in three or four months?

A. Anyone but an imbecile, I imagine.

Q. Can you? A. I can.

Q. Did you? A. I have.

Q. How long did it take you to learn to be a marker? A. About a year.

Q. Where did you learn?

A. In New York.

Q. Whereabouts in New York?

A. 498 7th Avenue, J. M. Silverman Company.

Q. J. M. what?

A. J. M. Silverman Company.

Q. How long did you work there?

A. Two years.

Q. What were those two years that you worked for them? A. I beg your pardon.

(Testimony of Mortimer Litwin.)

Q. What two years did you work for that company?

A. Well, that was about 10 years ago. [462]

Q. What two years did you work for them?

A. 1930 and 1931.

Q. 1930 and 1931?

A. Approximately. I am not sure.

Q. Where did you work after you left Silverman and Company?

A. I came out here and worked at Annette Blouse.

Q. Annette Blouse? A. That is right.

Q. Where is that?

A. That is near Olympic on South Los Angeles Street.

Q. What did you do there?

A. I was a cutter on women's blouses.

Q. Did you do any marking there?

A. I did.

Q. How much of your time was devoted to marking? A. About half and half.

Q. How long did you stay there?

A. I was there about a year and a half.

Q. Where did you work after Annette Blouse?

A. Violet Tatum.

Q. Where is that located?

A. That is 9th and Broadway Building, I believe. She may have moved since.

Q. What did you do there?

A. Cutter and marker. [463]

Q. How long did you stay there?

(Testimony of Mortimer Litwin.)

A. I was there about a year.

Q. Where did you go from there?

A. William J. Markowitz.

Q. Where is that located?

A. 719 South Los Angeles Street.

Q. That is in the same building with Lettie Lee?

A. That's right.

Q. Right? A. Right.

Q. How long did you stay there?

A. Two years.

Q. Where did you go from there?

A. Lettie Lee, Inc.

Q. When did you begin working for Lettie Lee?

A. About three years ago.

Q. What did you do for Markowitz?

A. I was a cutter for Markowitz.

Q. Didn't you do any marking?

A. No, I didn't.

Q. What did you do when you first went to work
for Lettie Lee? A. I was a cutter there.

Q. Did Mr. Swartz get you your job there?

A. He did. [464]

Q. You didn't do any marking when you began
working there? A. I didn't, no.

Q. When did you begin marking?

A. When I was there about two years.

Q. You have been a marker ever since?

A. That's right.

Mr. Nicoson: That is all.

Mr. Shapiro: Any questions, Mr. Sokol?

Mr. Sokol: No.

(Testimony of Mortimer Litwin.)

Mr. Shapiro: Nothing further. You may step down.

Trial Examiner Erickson: I have only one question. That is: These operations that Mr. Nicoson asked you about, that is, the time it takes to learn those operations, do you learn them all during the same period, or do you learn one job at a time?

The Witness: No, your Honor. You can only learn one at a time.

Trial Examiner Erickson: Yes, all right. So that, to learn all the operations, you would have to combine all the time that you gave?

The Witness: That's right.

Trial Examiner Erickson: All right.

(Witness excused.)

Mr. Shapiro: Mr. Swartz. [465]

LOUIS SWARTZ

called as a witness by and on behalf of the respondent, having been first duly sworn, was examined and testified as follows:

Direct Examination

Mr. Shapiro: Mr. Swartz, would you mind stepping down for just a minute?

May I recall Mr. Litwin for just one question?

Trial Examiner Erickson: Yes.

(Witness temporarily excused.)

Mr. Shapiro: Will you take the stand again?

MORTIMER LITWIN

recalled as a witness by and on behalf of the respondent, having been previously duly sworn, was examined and testified further as follows:

Direct Examination

By Mr. Shapiro:

Q. Did I understand your answer correctly to the Court that in order to learn to be a cutter and a marker that you would have to take the total of the period that you spent learning to make a mark and the period that you learned to cut, and add the two, and that you couldn't learn to be a cutter and a marker at the same time?

A. Well, possibly you could if you were both marking and cutting at the same time while learning.

Q. How long—— [466]

A. (Continuing) Possibly I didn't make that very clear.

Q. How long does it take to learn to become a marker?

Mr. Nicoson: I object to that, an attempt to impeach his own witness.

Mr. Shapiro: It is redirect.

Trial Examiner Erickson: He may answer.

Mr. Shapiro: I didn't ask him about that.

The Witness: I believe about two years.

Q. (By Mr. Shapiro) How long would it take to learn to become a cutter?

A. About a year.

Q. And which is the most difficult operation?

A. Well, one requires manual skill, and that is

(Testimony of Mortimer Litwin.)

cutting, and the other, marking, requires a little ingenuity in marking out the patterns.

Q. Did you also testify to how long it takes to learn to grade? A. I did.

Q. And how long does that take?

A. It takes about a year.

Q. Which is the most difficult operation of the three, grading, marking, or cutting?

A. Grading is.

Q. What is your answer then, so that it is clear in my mind, as to how long it would take to learn to mark and cut? [467]

A. About two years.

Q. In your opinion, if you are working as a cutter, can you learn to mark, while you are working as a cutter?

A. Yes, because you have to mark out the patterns first in order to cut, after the marker is made. One is interwound with the other.

Mr. Shapiro: That is all.

Cross Examination

Q. (By Mr. Nicoson) Can a person who has never had any experience in the garment trade, come into a plant and begin cutting right off the bat? A. He could.

Q. With the power knife? A. No, sir.

Q. Not with the power knife?

A. No. Everyone handles a shears at one time.

Q. It is just like cutting out a dress at home?

A. That's right.

(Testimony of Mortimer Litwin.)

Q. But they couldn't use the power knife the first time they came in?

A. Not if he wasn't acquainted with it.

Q. Now, how long would you say it would take an ordinary person to become qualified as a cutter, so that he can mark, grade, and operate the power knife, the hand shears, the short knife, and such other knives as they do use? [468]

A. Well, it is hard to say. I imagine three or four years.

Q. Three or four years?

A. Something like that.

Mr. Nicoson: Thank you, sir.

Mr. Shapiro: Nothing further.

Trial Examiner Erickson: Step down.

(Witness excused.)

Mr. Shapiro: Mr. Swartz.

LOUIS SWARTZ

resumed the stand as a witness by and on behalf of the respondent, having been previously duly sworn, testified as follows:

Direct Examination

By Mr. Shapiro:

Q. Where are you employed Mr. Swartz?

A. Lettie Lee, Inc.

Q. How long have you been working there?

A. Approximately six and half years.

(Testimony of Louis Swartz.)

Q. In what capacity?

A. Now, or when I was employed?

Q. Well, what is your capacity now?

A. I am in charge of the cutting room.

Q. What was your work when you first went to work for Lettie Lee? A. A cutter. [469]

Q. How long have you been in charge of the cutting room? A. The past three years.

Q. How many cutters did you employ on July 24, 1941?

Mr. Nicoson: I object to that. The payroll is the best evidence.

Mr. Shapiro: The man is in charge of the cutting room. He is qualified to answer.

Trial Examiner Erickson: He may answer.

The Witness: You will have to place the date. Is that after the strike?

Q. (By Mr. Shapiro) That is the day of the strike.

A. I didn't employ any. I wasn't at the plant myself.

Q. The day before, or July 23, 1941.

A. I didn't employ any.

Q. Do you know how many cutters were there?

A. That were working there?

Q. Yes. A. 10.

Q. Exclusive of yourself, or including yourself?

A. Including myself.

Q. Now, will you explain to the Court what your system or mode of operation is with respect to the cutting room? How does it function?

(Testimony of Louis Swartz.)

A. Well, in employing a cutter, the cutter has got to be capable of doing everything in the cutting room, anything [470] that calls for the operation in the cutting of a garment, and when they work in there a while, one cutter might show that he is more capable of doing one particular thing better than another, and I segregate them that way, to the increase of production. If at any time one portion of it is held up, I still have the opportunity of switching from one cutter to the other to help out the ones that slow it up.

Q. Now, will you state to the Court whether or not in cutting a garment you draw any distinction between sloping and the other cutting operations?

A. No, I do not.

Q. Will you state to the Court, in your own way, exactly what the operation of cutting a dress involves, start in from the very first.

A. Well, the first, original pattern will come out of the designing room, and it is turned over for grading. When the pattern is properly graded, each individual size made, or pattern size, it is turned over to the marker.

Q. Just a minute before you get to that stage. Just what do you mean by grading a pattern?

A. Well, the original pattern is size 10. It is the smallest size we make, and the largest size we make is the size 20. In order to make all those sizes, you have got to take the size 10 pattern and continue on up and make a pattern of each size. [471]

(Testimony of Louis Swartz.)

Q. Who does the grading at Lettie Lee?

A. At present, I do.

Q. How long have you been doing the grading?

A. Since I am in charge of the department, which is approximately three years.

Q. Do any of the other cutters ordinarily do any grading?

A. There is only one cutter that helps me with grading, and that is Eunice Usher.

Q. Does the work of grading a pattern involve any particular knowledge or skill?

A. Well, I think so.

Q. Do you know whether or not Vito Cimarusti ever did any grading at Lettie Lee?

A. Well, I think he claimed that he could do grading, but as far as I know, he has never done any for me.

Q. Did Angelo Castella do any grading?

A. No, the only cutter that ever worked for me that did any grading was Eunice Usher.

Q. But I will go through the list, if I may; Mort Litwin,— A. No.

Q. ——Joe Sardo, Lou Baliber, Don Quinn, Nolan Berteaux, did any of those people do any grading? A. No, sir.

Q. Now, you had reached the point where the pattern is graded and you make the marker. Now, what is a marker? [472]

A. Well, a marker is a piece of paper with the pattern laid on it, as closely as possible, not to waste any material.

(Testimony of Louis Swartz.)

The system we use now, we will lay up a number of sheets of paper with carbon paper in between, and make our marker that way, so as not to have to go through the procedure again of laying out the pattern every time you go to make a cut, because laying out the pattern involves a lot of time and knowledge.

Q. Now, who in the cutting department makes the markers?

A. Right now Mort Litwin.

Q. On July 23rd, the day preceding the strike, who made the markers?

A. Well, at that time it wasn't necessitated, because the line was completely marked. We have a certain amount of numbers in the line, and when those numbers first come out, all those numbers have to be marked. When all those markers are made, until other new numbers come out, there are no other markers necessary to be made.

Q. So that all that has to be done is to put a cutter—

A. Is to take the markers, lay up the material and cut the dress.

Q. Are you acquainted with the term, chopper?

A. Yes.

Q. In the manufacturing industry? [473]

A. It is a very common name in the industry.

Q. What is it understood to mean?

A. Well, it is more or less an apprentice in the trade, that wants to learn to become a cutter, and

(Testimony of Louis Swartz.)

his duties are entirely the laying up of material, and then cutting it out, doing nothing else.

Q. In the Lettie Lee cutting department, did you require or did you employ full-fledged cutters, as distinguished from choppers?

A. I don't understand that question.

Mr. Shapiro: Will you read it back, and if you still can't understand it, I will reframe it.

(The question was read.)

The Witness: No, I did not.

Q. (By Mr. Shapiro) In other words, do I understand you to mean that the people you employed as cutters were choppers?

A. Well, they—

Mr. Nicoson: I object to that. That is certainly testifying into the record.

Trial Examiner Erickson: Sustained.

Q. (By Mr. Shapiro) Could an ordinary chopper do the cutting work required by the Lettie Lee factory? A. Yes.

Mr. Nicoson: I object to that until he shows what—I withdraw it. Sorry. [474]

Q. (By Mr. Shapiro) Now, in the work of cutting a dress—I don't recall if I asked this question or not—do you draw any distinction between sloping and the other cutting operations?

A. No.

Mr. Nicoson: I object to that. He has already answered that.

Trial Examiner Erickson: Let it stand. He has answered it.

(Testimony of Louis Swartz.)

Q. (By Mr. Shapiro) Do you designate any particular person for the sloping operations?

A. Well, as I explained before, when I employ a person, when I see they excel in doing one thing more so than another, I try to keep them on doing that one particular thing as long as I can.

Q. In your opinion, does it require greater skill and ability to slope a dress than to cut it?

A. Yes, it does.

Q. Now, you know Dorothy Richard, Kathryn Lembke, and Eunice Usher, do you not?

A. Yes, I do.

Q. Will you state to the Court and describe the kind of work they did at the factory, immediately preceding the time of the strike?

Mr. Nicoson: Just a minute. Is that collectively or [475] individually?

Q. (By Mr. Shapiro) Take them one at a time. Take Eunice Usher.

A. I can't say any more other than they did everything that was required of a cutter to do.

Mr. Nicoson: I object to that and move to strike as not responsive.

The Witness: I could, if you want me to, enumerate everything they should do.

Trial Examiner Erickson: All right. I will strike it.

Mr. Nicoson: Not what they should do. What they did do.

The Witness: All right, what they did do.

(Testimony of Louis Swartz.)

Q. (By Mr. Shapiro) All right. Tell us what Eunice Usher did.

A. You mean, you want to know exactly what she did the first day, or what she does every day.

Q. What she was doing immediately before July 24th.

A. Well, that is hard to remember. She might have been grading patterns, she might have been cutting, she might have been sloping.

Q. Well, assuming that she was performing the usual duties assigned to her in connection with the cutting of a dress, will you state what she did? [476]

A. Well, all those duties I just stated are assigned to her; grading, sloping, and cutting.

Q. Well, apparently counsel wants us to repeat it rather than summarize it, so will you state what Eunice Usher did in cutting a dress?

A. Well, in cutting a dress she would get her ticket, and go over to the bin and get her marker, call the stock girl for her material; the stock girl would bring her material, and she would lay it up, put the marker on top, and cut out the lines.

Q. And what did Kathryn Lembke do?

A. The same thing. You mean, right after the strike?

Q. The last time that she was working at the factory before the strike was called.

A. The same thing.

Q. And what did Dorothy Richard do?

A. The same thing.

Q. Did these girls that I have named do any-

(Testimony of Louis Swartz.)

thing other or different than what the men cutters did?

Mr. Sokol: Just a minute. That is calling for the conclusion of the witness. I object on that ground.

Trial Examiner Erickson: He may answer.

The Witness: What was the question again?

Mr. Shapiro: Will you read it, please?

(The question was read.) [477]

The Witness: No.

Q. (By Mr. Shapiro) Do you know how many departments there are in the Lettie Lee plant?

A. Well, how far do you want me to include? Do you want me to include sales, shipping, receiving?

Q. No, start at the very beginning and go through all the departments in the plant.

A. Do you want to include all the manufacturing?

Q. Yes, in the manufacturing.

A. Well, the first department would be the designing department. The second would be the stock room. The third would be the cutting room. The fourth would be the operating room. The fifth is the second drapers.

Mr. Nicoson: I beg your pardon?

The Witness: The fifth is the second drapers.

Mr. Nicoson: The second drapers.

The Witness: The sixth are the pressers. The seventh are the first drapers. The eighth are the finishers. Pardon me. I skipped one in between

(Testimony of Louis Swartz.)

there. I skipped the second finishers in between the pressers and the drapers.

Q. (By Mr. Shapiro) Have you finished insofar as— A. No.

Q. Go ahead.

A. Then we have the first finishers, and then the examiner.

Q. And after the dress has gone through the examiner, is [478] it finished? A. Yes.

Q. And ready to go out on the market?

A. Ready to go into the shipping room.

Q. When the cutters have finished cutting a dress, what do they do with it?

A. They take it up to the assorters.

Q. What do the assorters do?

A. They check on the cutting, segregate the pieces, bundle them into individual colors and sizes, and turn them over to the factory.

Q. For what purpose?

A. To be operated.

Q. You mean to be sewn together?

A. To be sewn together.

Q. Could the dress, as cut by the cutters, go to the operators, without first passing through the hands of the— A. The assorters.

Q. —the assorters?

A. Well, yes and no. If it did go through, it would have to come back four or five times to have certain things marked on it that it would be required to have the operator have.

Q. Well, as a practical matter?

(Testimony of Louis Swartz.)

A. No, definitely.

Q. Will you explain to the Court why it is essential that [479] after the dress is cut by the cutters that it go to the assorters?

A. Well, when an operator is assembling her dress, there are a lot of materials where it is hard to determine the right and the wrong side of the material, and if they didn't have the wrong or the right side marked for them, they could possibly sew up the dress half on one side of the material, and half on the other side. It is the assorters' work to mark around, mark either the wrong or right side of the material, so that the operator would know which way to sew the material into the dress.

Q. What other duties do the assorters have?

A. Well, there are darts that are in the dress which are style lines.

Q. Will you explain what you mean by that?

A. Well, a dart is a style line of a dress, and those darts have to be marked on there for the operator to sew.

Q. And who marks the darts?

A. The assorters.

Q. Those darts are then not on the dress when the dress is cut by the cutter? Is that correct?

A. No.

Q. What work does the assorther do?

A. Well, it is their duty to match a zipper, and put the zipper into the bundle to go to the operator. [480]

Q. Anything else that the assorther does?

(Testimony of Louis Swartz.)

A. Well, when a cutter cuts a dress, if he is cutting more than one, he might have eight dresses size 16 to cut, and there might be four different colors, and when he turns it over to the assorter, she would segregate these colors, separate them, rather, because you can't give two different colors to an operator to sew.

Q. Is the process of assorting a dress an essential part of the work necessary between the time the dress is cut and the time that it is delivered to the operating department? A. Definitely.

Q. When the cutter finishes the cutting operation, is the dress complete in any sense?

A. No, in no sense whatsoever.

Q. What does the cutter have after he has cut the dress?

A. Well, he has got possibly four or five yards of material, cut up in little pieces that don't mean anything until they are put together.

Q. When, in the process of manufacturing the dress, does the dress first become a completed, finished product?

A. Never until it passes the second—the first finisher.

Q. And about how many operations is that after the first operation of cutting?

A. Oh, I would say nine or ten.

Q. Now, is it possible, Mr. Swartz, for the various and [481] different manufacturing departments of Lettie Lee to function without the others?

A. No, I would think it is impossible.

(Testimony of Louis Swartz.)

Q. And will you explain why?

A. Well, if you took some material and cut it up, you can't go out and sell that as a dress. It would have to be sewn up. And you can't take four or five yards of material, and take it over to an operator, and say, "Here, sew up the dress," unless you cut it up for them. And after the operator finishes her work, if you didn't give it over to the presser to press, you couldn't very well send it to a store and say, "Here is a completed garment."

Q. Is there any operation involved in the manufacture of the dress, any of the operations that you have named, that could be eliminated and still have the same product when you are through?

A. No, not the same product.

Q. Now, there has been reference made during the course of this hearing to the cutting department or the cutting area. It has been variously phrased. Will you state to the Court where the cutters work?

A. Well, it is a room partitioned off in the building, so far as I can figure it out. It is in the south wing of the building, facing west.

Q. And does that partition extend from the floor to the [482] ceiling? A. No, it does not.

Q. About how high is the partition?

A. Oh, I would say seven feet.

Q. Is this area enclosed on all four sides?

A. No, it is not.

Q. Where is it open?

A. Well, there is one section that is open in the

(Testimony of Louis Swartz.)

stock room. The stock room is included in the cutting room.

Q. Now, what is the equipment of the cutting department? What machines or tools or devices do you have there?

A. Well, the only tools they use up at our factory, cutting tools, are either the shears, the short knife or the circular machines.

Q. Do you have tables there? A. Yes.

Q. Do the cutters work on the tables?

A. Yes, they do.

Q. Do the assorters work in this same area?

A. Yes.

Q. How many assorters were there in the cutting department on July 23, 1941, the day before the strike? A. Four.

Q. How many assorters are there now?

A. Four. [483]

Q. Did each of the assorters do substantially the same work that you have explained? A. Yes.

Q. Now, other than the male cutters and the assorters, who else works in the cutting department?

A. Well, we have the female cutters.

Q. Anybody else in that department?

A. The stock room girl.

Q. And what does she do?

A. Well, she takes charge of stock, sees that the stock is kept in order. She brings the material to the cutters that they cut. She takes it away when they are finished with it.

Mr. Shapiro: Now, I asked your Honor if we might adjourn at noon.

(Testimony of Louis Swartz.)

Trial Examiner Erickson: All right. We will adjourn until 1:30.

Mr. Shapiro: Before we adjourn, I would like to make a demand and notice to produce on the record, if I may.

Trial Examiner Erickson: Yes.

Mr. Shapiro: I will ask counsel for the National Labor Relations Board to produce at 1:30 the original of a letter of September 11, 1941, from Lettie Lee, Inc., signed "Sam Bothman," to Mr. D. C. Sargent, care of the National Labor Relations Board, Twenty-First Region, United States Post Office and Court House, Los Angeles, California. I have the [484] copy, if that will help you in identifying it, and I would like to have the copy back.

Mr. Sokol: Before we adjourn also,—are you through, Mr. Shapiro?

Mr. Shapiro: Pardon me?

Mr. Sokol: Are you through?

Mr. Shapiro: No. And I will also ask, and I make the motion on the record, that counsel for the union produce the original of the agreement dated August 8, 1941, between the Dress Association of Los Angeles and the International Ladies' Garment Workers' Union and the Joint Board of the City of Los Angeles, composed of Locals 96, 97, 87 and 65.

Mr. Sokol: You have a copy of it?

Mr. Shapiro: I have a copy. Will you stipulate it is a true copy?

Mr. Sokol: Is it mimeographed or typewritten?

Mr. Shapiro: It is mimeographed. Yes, the sig-

(Testimony of Louis Swartz.)

natures are mimeographed too. Will you stipulate this is a true copy and may be used for all purposes for which the original might be used?

Mr. Sokol: I will examine it. I will bring it with me.

Mr. Shapiro: I don't want you to take it with you.

Mr. Sokol: Right now I ask that I take it during the recess and return it—

Mr. Shapiro: I don't want you to take it with you. [485]

Trial Examiner Erickson: It is not in evidence. He doesn't have to give it to you.

Mr. Sokol: I know he doesn't.

Mr. Shapiro: It is the only copy I have.

Mr. Sokol: Well, obviously—

Mr. Shapiro: We might have extreme difficulty if anything happened to this in giving it to you.

Mr. Sokol: I am certainly trustworthy to that extent.

Mr. Shapiro: You are trustworthy to any extent, but I don't want to part with any part of the evidence until it is offered.

Trial Examiner Erickson: We will recess until 1:30.

Mr. Sokol: Just one moment, your Honor. There is this matter: I made an error in informing your Honor that the agreement which provided for a penalty in the event Lettie Lee, and these other persons who were members of the Southern California Garment Manufacturers As-

(Testimony of Louis Swartz.)

sociation, recognized the union, in that I said the agreement, from what I understood, was not executed. But the Senate Civil Liberties Committee Report, Volume 52, does show that it was executed by seven concerns, but does not name the concerns.

I just wanted to note that I was mistaken, in that it actually, according to the testimony of Mr. Wolfe, Nelson Wolfe, was executed. I intend to put on something with respect to that. I can't locate Mr. Wolfe right now. [486]

Mr. Shapiro: You don't have any information that it was executed by Lettie Lee?

Mr. Sokol: Well, there were only seven or eight members of the organization.

Trial Examiner Erickson: We will recess until 1:30.

(Whereupon, at 12:05 o'clock p. m., the hearing in the above-entitled matter was recessed until 1:30 o'clock p. m.) [487]

Afternoon Session

(Whereupon, at 1:30 o'clock p. m. the hearing was reconvened, pursuant to recess.)

Trial Examiner Erickson: The proceeding will come to order.

Mr. Shapiro: I will call Miss Richard. I mean Mrs. Lamire.

I have asked the Examiner's permission to do this.

Mr. Ryan: That is all right.

DORORTY RICHARD LAMIRE,

called as a witness by and on behalf of the respondent, having been first duly sworn, was examined and testified as follows:

Direct Examination

Q. (By Mr. Shapiro) Will you state your name, please?

A. Dorothy Richard Lamire, L-a-m-i-r-e.

Q. I can barely hear you.

Mr. Nicoson: I can't hear her either. What was that last?

(The answer was read.)

Q. (By Mr. Shapiro) Richard was your maiden name then, I take it? A. Yes.

Q. Were you ever employed at the factory of Lettie Lee, Inc.?

A. I have been employed since last June. [488]

Q. June of 1941? A. June of 1941.

Q. Do you recall in what part of the month of June of 1941 you went to work there?

A. It was the very beginning of June, in the second week, I think.

Q. In the second week? A. Yes.

Q. Do you know when you received your first check? A. The 13th of June.

Q. And you commenced working—

A. Before that.

Q. —at the beginning of that week?

A. Yes.

Q. So that would be some time around the 6th of June? A. Yes.

(Testimony of Dorothy Richard Lamire.)

Q. In what capacity were you employed there?

A. As a cutter.

Q. Did you work in the same department with Vito Cimarusti, Angelo Castella, Mort Litwin, Eunice Usher, Joe Sardo, Louis Baliber, Don Quinn, Nolan Berteaux, Kathryn Lembke, Sarah Giochetti, Marie Chavez, Frances Avila, and Saloma Sesma?

A. Yes.

Q. Will you state to the Court just what work you did? What did your particular operations consist of? [489]

A. Well, I was cutting and sloping, mostly.

Q. By the way, before you went to work at Lettie Lee, had you had any schooling or instruction in cutting?

A. Yes, I took 14 weeks of pattern drafting, and I had about 14 weeks of cutting.

Q. 14 weeks of pattern drafting, and 14 weeks of cutting. Where did you receive that instruction?

A. At Frank Wiggins Trade School.

Q. And that is in the city of Los Angeles, is it?

A. Yes.

Q. When did you attend that school?

A. Well, I finished in December, '41—I mean, '39. I went the two years previous.

Mr. Nicoson: I didn't get that last.

The Witness: I went for the two years of 1938 and '39—no, '39 and '40, it was.

Mr. Nicoson: You went to school in 1939 and 1940?

(Testimony of Dorothy Richard Lamire.)

The Witness: Yes, for two years.

Q. (By Mr. Shapiro) In the course of your work at Lettie Lee, did you ever cut out the complete garment or dress?

A. That was just about my first assignment, to cut out single dresses.

Q. Will you describe to the Court just how you performed that operation?

A. Well, you lay your material on the paper the length of [490] your marker. Then you cover it with your marker, which has the pattern drawn on it, and then you just follow your pattern and cut it out.

Q. Did you ever make a marker?

A. Yes, I have.

Q. At Lettie Lee? A. Yes.

Q. Did your work differ in any respect from the work performed by the men cutters whose names I have previously read off?

Mr. Nicoson: I object to that.

Trial Examiner Erickson: Sustained.

Q. (By Mr. Shapiro) Did you work at a table? A. Yes, I had my table.

Q. What else did you use?

A. Well, I cut with a scissors mostly.

Q. Will you state to the Court what the men cutters did when they cut out a garment?

A. Well, they cut it out just the same as I did, except they generally cut with the machines.

Q. Did they sometimes cut with scissors?

(Testimony of Dorothy Richard Lamire.)

A. Yes, whenever they have singles or small amounts.

Q. Did you ever cut with a machine?

A. I have cut with a machine; not at Lettie Lee, though.

Q. Now, this sloping operation that you described, will you [491] state to the Court what that is, and how you do it?

A. Well, it is when any dress has been sent out for embroidery work, or pleating, or anything else, and then it is brought back, it has to be cut with a marker like anything else, only I think it is more intricate than cutting.

Mr. Nicoson: I move to strike out what she thinks.

Trial Examiner Erickson: It will be stricken.

Q. (By Mr. Shapiro) In your opinion, does it require a greater amount of skill and ability to slope a garment than it does to cut it?

A. Yes, I think so.

Mr. Nicoson: I object to that. It calls for the opinion of the witness.

Trial Examiner Erickson: She may answer then.

The Witness: I think it does.

Mr. Nicoson: I move to strike that answer on the same grounds, what she thinks.

Trial Examiner Erickson: The motion is denied.

Q. (By Mr. Shapiro) Mrs. Lamire, how long

(Testimony of Dorothy Richard Lamire.)

did you continue working at Lettie Lee after you started in June of 1941?

A. Well, I just quit last week.

Q. You quit last week? A. Yes.

Q. And why did you quit?

A. Because I am going to have a baby in three months and [492] can't work.

Mr. Sokol: I didn't get that. Oh, pardon me.

Mr. Shapiro: That is all.

Cross Examination

Q. (By Mr. Nicoson) When you went to work for Lettie Lee, Kathryn Lembke was not working there then, was she?

A. I believe she was on vacation.

Q. That isn't what I asked you.

A. No, she wasn't.

Q. Now, please answer my questions and don't give me your own ideas. She didn't work there up until October of this year, did she?

A. I really don't know just when it was she came back.

Q. She was gone, at least she wasn't there, for about four months right after you began to work? Is that about right? A. Yes.

Q. As a matter of fact, you were hired to take her place, weren't you? A. Yes.

Q. Now, you say you sometimes cut out a dress, singles, you said. Is there any difference in cutting a single than in cutting out a dress at home, if you had the proper pattern?

(Testimony of Dorothy Richard Lamire.)

A. No, but you have to be skilled to do it, to cut it out properly. [493]

Q. Well, any housewife who knows how to follow a pattern can cut out a dress at home; isn't that right? A. Yes.

Q. And that is the same kind of work that you were doing; isn't that true? A. Yes.

Q. Now, this sloping you spoke of, you don't get that directly from the cutters, do you,—the sloping work?

A. Well, it is a part of the dress.

Q. You don't get it until after it has been cut and sent to some outside concern?

A. It is not cut. It is always sent out in a piece.

Q. It goes out in a big bolt and is sent to the pleaters and tuckers, is it?

A. It goes out in the certain amount that is needed.

Q. It is already cut in squares, isn't it?

A. Yes.

Q. By the cutter? A. Yes.

Q. You don't do that, do you?

Trial Examiner Erickson: Just answer.

The Witness: No.

Q. (By Mr. Jacobson) Then it goes to the outside processor, where it is pleated; is that right?

A. Yes. [494]

Q. Then it comes back to you? A. Yes.

Q. That is when you do your sloping?

(Testimony of Dorothy Richard Lamire.)

Trial Examiner Erickson: What was the last answer?

The Witness: I said "Yes."

Mr. Nicoson: That is all. Thank you.

Cross Examination

Q. (By Mr. Sokol) You mainly cut trimmings before the strike, didn't you?

A. Yes, I was confined to trimmings mostly, and sloping.

Mr. Sokol: That is all.

Mr. Shapiro: Just one or two questions, please. You state that the material—

Mr. Sokol: Just pardon me a moment.

Mr. Shapiro: All right.

Q. (By Mr. Sokol) What were your wages just prior to the strike?

A. I was making \$18.00, over \$18.00 a week.

Q. Approximately \$18.00 a week, would you say? A. Yes.

Q. Sometimes it might be between \$18.00 and \$19.00?

A. It was always over \$18.00. It came to \$18.29 a week.

Q. What is that?

A. It was always over \$18.00. It came to \$18.29 a week.

Mr. Sokol: \$18.29 a week. That is all. [495]

Redirect Examination

Q. (By Mr. Shapiro) When did you say you left Lettie Lee? A. Last week.

(Testimony of Dorothy Richard Lamire.)

Q. Last week. You worked for Lettie Lee for some time while Miss Lembke was working there, didn't you? A. Yes.

Q. When Miss Lembke came back some time in October, you didn't leave at that time, did you?

A. No.

Q. You stated that before the material is sent out to be pleated that it is cut in squares by the cutter, and that you didn't do that cutting. Just what does that consist of, cutting the material before it goes out to the pleaters?

A. It isn't cutting at all. It is just taking out the amount that is required for the length of the skirt, or whatever it is.

Q. You mean it is cut off a bolt, a piece of material off a bolt?

A. It is cutting a piece of material from a bolt.

Q. How is that done,—with a scissors?

A. It is generally just torn.

Q. That doesn't require any skill or ability?

A. No.

Mr. Nicoson: I object to that. [496]

Trial Examiner Erickson: Overruled.

Mr. Nicoson: And move that the answer be stricken.

Trial Examiner Erickson: Let it stand.

Q. (By Mr. Shapiro) After the material comes back from the pleaters, what do you do with it?

A. That is when it is cut in the regular pattern for the dress.

(Testimony of Dorothy Richard Lamire.)

Q. How do you go about that process?

A. It is the same as cutting out a dress. You have to fit your pattern onto the material and mark it out, and then cut it.

Mr. Shapiro: That is all. Thank you.

Recross Examination

Q. (By Mr. Nicoson) Did Kathryn Lembke instruct you in her duties before she left?

A. No.

Q. Were you paid on a piecework basis?

A. No.

Q. How come that some weeks you made \$18.29, and other weeks you only got \$17.93?

A. \$17.93 is after Social Security and everything is deducted.

Q. I beg your pardon?

A. \$17.93 is my salary after my Social Security.

Q. After your deductions? [497]

A. Yes.

Mr. Nicoson: That is all. Thank you.

Trial Examiner Erickson: Do you intend to go back to work at Lettie Lee?

The Witness: No, I can't go back to Lettie Lee.

Q. (By Mr. Shapiro) Why not, Mrs. Lamire?

A. My husband objects.

Q. You mean you are going to have a child?

A. I am going to have a child and stay home and take care of my home and child.

(Testimony of Dorothy Richard Lamire.)

Mr. Shapiro: That is all. Thank you.

(Witness excused.)

Mr. Shapiro: Mr. Swartz.

LOUIS SWARTZ

resumed the stand as a witness on behalf of the respondent, having been previously duly sworn, and testified further as follows:

Direct Examination (Continued)

Mr. Shapiro: May I have the last question and answer read that I put to Mr. Swartz?

(The record referred to was read.)

Q. (By Mr. Shapiro) You have just heard Mrs. Lamire testify, have you not, Mr. Swartz?

A. I have.

Q. You knew her as Dorothy Richard, when she worked at Lettie Lee? [498]

A. That is correct.

Q. Was the work performed by any of the male cutters any other or different than that performed by Mrs. Lamire? A. No.

Mr. Nicoson: We object to that. It calls for a conclusion of the witness.

Trial Examiner Erickson: Sustained.

Mr. Shapiro: Well, is that on the theory there is already evidence in as to what each of them did, or on the ground it is the witness' conclusion?

(Testimony of Louis Swartz.)

Trial Examiner Erickson: On the grounds that are given in the statement of the objection. Did you hear the objection?

Mr. Shapiro: Yes, I did, your Honor, and I don't want to just burden the record with a repetition of what the men do and what the women do, but if it is solely on the ground it is a conclusion of the witness—

Trial Examiner Erickson: You mean you are making an open comparison by this witness of what has already been testified as to their duties?

Mr. Shapiro: I am not calling him as an expert.

Trial Examiner Erickson: But you are asking him whether the descriptions given as to the work done by the men, that he gave this morning, and the work done by the [499] women are in his opinion the same?

Mr. Shapiro: No, I didn't ask that question. At least, I didn't intend to. I intended to ask him whether or not the work done by the men cutters differed in any respect from the work done by the last witness. I am not concerned—

Trial Examiner Erickson: You mean in the particular duties she has testified she did?

Mr. Shapiro: That is correct.

Trial Examiner Erickson: He may answer that.

Mr. Nicoson: I submit, your Honor, that that is an ultimate fact to be found by the Board, and I also submit that this witness is not qualified and it isn't his province to invade the province of the Board in finding an ultimate fact.

(Testimony of Louis Swartz.)

Trial Examiner Erickson: He may answer as to his opinion.

Mr. Shapiro: Will you read the question, please, so that there will be no argument about what the question is?

(The question referred to was read, as follows:

"Q. Was the work performed by any of the male cutters any other or different than that performed by Mrs. Lamire?"

A. No.

Q. (By Mr. Shapiro) Now, after the dress is cut in the cutting department and goes to the assorters or bundlers, it then goes to the operating department; is that correct? [500]

A. That is right.

Q. Now, will you describe that department? Tell us what it consists of?

A. The actual operating of every little unit that is in it?

Q. Describe it fully, in detail.

A. Well, there are different types of machinery in the operating department. There is the ordinary sewing machine, and there are, oh, five or six special machines that they use in the course of constructing the garment.

Q. Does the operating department consist principally of machines used in sewing the garment?

A. Yes.

Q. Is that the department where the various pieces that have been cut are first assembled?

(Testimony of Louis Swartz.)

A. Yes.

Q. Where is that department located with reference to the cutting room?

A. Right on the other side of the partition.

Q. Do you know how many people are employed in that department?

A. Well, I would make a rough guess of about 60 people.

Q. And they all sew? A. No.

Q. Well, what employees are there other than those that [501] sew in that department?

A. Well, they have the pinker there, the pinking machine.

Q. What is a pinking machine?

A. The pinking machine is a machine that puts a zig-zag line or an edge on a seam after it has been sewn, so that the seam wouldn't ravel.

Q. All right. Who else is in that department?

A. There is the girl that operates the hem-stitching machine.

Q. What does that machine do? What is the function of it?

A. Well, it sews a double row of stitching, leaving a space in the center which, when cut makes a finished edge on both ends of the material, after it has been cut through the center.

Q. All right. In addition to the personnel you have already named, who else is there in the operating department?

A. Then there is the felling machine.

Q. What is that? A. The felling machine.

(Testimony of Louis Swartz.)

Q. The felling? A. Yes.

Q. What is that machine?

A. That is used to turn up the bottoms of dresses, puts [502] an invisible stitch on the wrong side of the garment to hold up the hem.

Q. All right. Are there any other types of machines or kinds of work performed in the operating department, other than what you have just told me about?

A. Yes. There is a snap sewer.

Q. All right. What is a snap sewer?

A. Sews the snaps on.

Q. You mean the snaps that fasten portions of the dress together? A. That is right.

Q. Anything else?

A. A button-hole machine.

Q. Which makes button-holes, I take it?

A. Correct.

Q. Anything else?

A. There is the hemming machine.

Q. And what does that machine do?

A. Makes hems. [503]

Q. All right. Tell us what else there is in that operating department.

A. There is the basting machine.

Q. What does that machine do?

A. Does basting.

Q. What do you mean by basting?

A. They are long single running stitches to hold two pieces of material together until pressed, and then that long running stitch is drawn out.

(Testimony of Louis Swartz.)

Q. All right. Any other types of operators or machines?

A. No, I think that's about all there are up there.

Q. I believe you stated that your recollection was that there were approximately 60 persons in the operating department; is that right? Is your answer "yes"? A. Yes.

Q. Now, how long does it take the garment to get out of the operating department before it goes into the next step?

A. I don't think anyone can state that, because it depends upon the individual garment, and it also depends on how many times it has to leave the operator and come back to her.

Q. So there is no way you could approximate it?

A. No, I wouldn't attempt to guess at that.

Q. Where does the garment go after it has gone through the operating department?

Q. Well, it leaves the operator once and then comes back [504] to her.

Q. All right. At what stage does it leave the operating department?

A. When they are half finished, I would say, when it goes over to the second draper, to be put on the form and certain required seams that are needed are pinned, according to the way they should be pinned. Then it is returned to the operator to make those seams.

Q. Now you say it goes to a second draper when

(Testimony of Louis Swartz.)

it is about half finished. Is there a first draper, or anything of that kind? A. Yes.

Q. When does it go to the first draper?

A. It goes to the first draper after it is pressed.

Q. I see. All right. Now, just what is the purpose of sending the garment in a half finished condition to the second draper?

A. Well, that helps the quality of the garment. They don't do it in the cheaper line of work, because they are not very much interested in how well their garment is made up, for price reasons.

Q. Where is the second draper located?

A. Well, it is just at the foot of the operating department.

Q. You mean just adjoining the operating department?

A. Well, it is in the operating department,—

[505]

Q. I see.

A. But it is to one end of it.

Q. Where is it with respect to the cutting room?

A. Just on the other side of the partition.

Q. How many people are employed as second drapers?

A. Well, I believe there is two there now.

Q. Does that number vary from time to time?

A. Yes, it does.

Q. What is the largest number of second drapers that you employ?

A. Well, it is hard to state that, because at times if the second drapers have more work than the girls

(Testimony of Louis Swartz.)

can handle, it is only normal that the first drapers have less work, because the operation has been held up in that effort, and they take some of the first drapers and put them down to help the second drapers until they relieve the congestion.

Q. All right. After the garment leaves the second draper, it is returned to the operators; is that right? A. Right.

Q. And goes through the rest of the operating process? A. Correct

Q. What is the last operation that is performed by the operators before the garment goes to the next department?

A. That depends on the individual garment.

Q. All right. Will you explain what you mean by that? [506]

A. Well, that will require a mechanic that sits at the machine to explain that. I haven't—as much as I have been in the factory, I have never seen two girls work the same. One girl will finish with one seam first and another girl will finish off with another one. One girl might set her sleeves before she sets the skirt on, and another girl might set the skirt on first.

Q. Is this a correct statement: When the garment is completely assembled in the rough, it is ready to leave the operating department?

A. Yes.

Q. Then where does it go?

A. Well, then it goes over to the pinker.

(Testimony of Louis Swartz.)

Q. All right. Now, is there one pinker or more than one pinker?

A. Well, there are two machines there, and two available girls. One girl usually sits at the pinking machine continually, and if she gets—if it gets congested there, another girl will sit down at the other machine to help her out until she is caught up.

Q. And where are these pinking machines located with respect to the operating department?

A. Right in the operating department

Q. Right in it?

A. They are on the same shaft as the sewing machines. [507]

Q. And where with respect to the cutting room?

A. On the other side of the partition.

Q. Will you state to the Court what operations the garment goes through in the pinking process?

A. Well, the girl would take the exposed seams, and lay them flat on her machine, and there is no thread involved in the machine. It is just a zigzag knife that cuts a zigzag line at the edge of the seam to prevent raveling.

Q. After the pinking machine, what is the next step in the progress of the garment?

A. It goes to the hemming machine.

Q. Where are they located?

A. In the operating room.

Q. All in the operating room?

A. All these machines are located in the operating room.

Q. I see. Do they all operate on the same shaft?

(Testimony of Louis Swartz.)

A. There are a few special machines that are on an individual motor stand.

Mr. Shapiro: May I have the second question from the last one read, please?

(The record referred to was read.)

Q. (By Mr. Shapiro) How many hemming machines are there? A. One.

Q. All right. What happens to the dress after it goes to the hemming machine? [508]

A. The bottom is put upon it.

Q. On the hemming machine? A. Yes.

Q. Then after the bottom is put upon it, what next?

A. Then it goes to the presser.

Q. To the presser. Now, is that in the operating department?

A. Yes, the pressing department is right in the same—it is all one large room after that.

Q. I see. Now, where are the pressing machines located with respect to the rest of the operating department?

A. At the head of the operating machines.

Q. Where with respect to the cutting room?

A. On the other side of the partition.

Q. How many pressing machines are there?

A. Well, they are not machines. They are pressing irons.

Q. Well, how many irons are there?

A. In the factory, or in use in the factory?

Q. In use?

(Testimony of Louis Swartz.)

A. Well, there are four irons used at the factory for the stock production, and there is three irons at the further end of the factory in the designing room, used for samples.

Q. How many pressers are employed?

A. Four.

Q. I take it that the function of the presser is merely to [509] press the garment; is that correct?

A. That's correct.

Q. After the garment is pressed, where does it go?

A. Well, then it will go to the second finisher.

Q. To the second finisher? A. Yes.

Q. What does he do or she do?

A. Well, on 90 per cent of the garments there is some hand work that has to be done on the garment, which you can not possibly do on the operating machine because of the need of invisible stitches. For example, if there is a facing on a dress, and you have to fasten that facing down, the second finisher does that.

Q. How many second finishers are there?

A. I never took the trouble to count, but I believe the second finishing table can seat ten girls, and as far as I have noticed, it has always been full.

Q. All right. After the second finisher complete their work on the garment, where does it go next?

A. Then it goes to the first draper.

(Testimony of Louis Swartz.)

Q. Will you describe to the Court where the first drapers are and what they do?

A. Well, they are in the operating room, at the head of it. They put every garment on the form, put the necessary pads in it, pin them on, pin any buttons or flowers on that are [510] needed on the dress.

Q. How many first finishers are there?

A. I believe there is three.

Q. They are also in this same large room, are they? A. The same room, yes.

Q. All right. After the first finishers have completed their work, where does the garment then go?

A. Well, you jumped me one move. We were at the first draper. Then it goes to the first finisher.

Q. All right. So that—

A. From the first draper.

Q. So that we are straight on the record, when it leaves the first draper where does it go?

A. To the first finisher.

Q. How many first finishers are there?

A. Again, it is a case of a table. I think that table will seat only eight, and I imagine there are six working there. I wouldn't state definitely.

Q. What does the first finisher do?

A. Sew in the pads and sew on the buttons that have been pinned on by the first draper.

Q. In other words, the first drapers pin on the buttons and flowers, and the first finishers fasten them on the garment? A. Yes.

(Testimony of Louis Swartz.)

Q. What happens after the first finishers are through? [511] A. It goes to the examiner.

Q. Is there one examiner or more than one examiner? A. Just one.

Q. Is he also in this room? A. Yes.

Q. What does he do with respect to the garment?

A. Well, her first duty is to remove any spot that might have gotten on the garment in the course of the operation, and to generally inspect the dress to see that there hasn't been anything done wrong, and check it in as a finished garment.

Q. After the garment passes the examiner's inspection, what happens then?

A. It goes out into the shipping room to be prepared for shipment.

Q. Then it is a finished garment after the examiner checks it and O.K.s it? Is that correct?

A. That's correct.

Q. Now, there has been some testimony, Mr. Swartz, that a part of the plant is located on the seventh floor. Is that correct?

A. That's correct.

Q. The main portion of the plant, I believe, is on the 12th floor? Is that correct?

A. That's correct. [512]

Q. What departments or machines are located on the seventh floor?

A. There is a complete manufacturing unit down there operating entirely individually, for the complete manufacturing of the garment, all but the cutting and the assorting.

(Testimony of Louis Swartz.)

Q. What is the reason that there is a portion of the plant on the seventh floor?

A. Well, we only put it in there, I would say, about two years ago. The amount of business called for more help, and more help called for more machinery, and not having the required space upstairs, we got a loft downstairs and put up another individual factory.

Q. In other words, it is merely a matter of not having enough floor space on the 12th floor, so that part of the factory unit and machines are on the 7th floor; is that right? A. That's right.

Q. But you have the same operating machines and the same construction?

A. There is a duplicate downstairs of every machine that is upstairs.

Q. You have only the one cutting room, however? A. That is correct.

Q. And that is on the 12th floor? [513]

A. That's correct.

Q. And all the cutting is done there?

A. Yes, sir.

Q. All right. Now, with respect to your own services in the cutting room, just what do they consist of, Mr. Swartz?

A. Well, my first duty is to see that all patterns are graded and up to date. Every other duty I perform I have to do according to my judgment. If, for example, the marker has more than he can handle, I go over and help him mark. Or if the cutters have more orders than they can handle in

(Testimony of Louis Swartz.)

the required time, I will go over and cut. If the sloper will have more than she can do, I will go over and help her.

Q. Is there any part of the work in the cutting department that you do not do yourself personally? A. No.

Q. And you divide your time and you select the work in accordance with—

A. As it is needed.

Q. —what is necessary to be done and the help available? Is that correct? A. That's right.

Q. Now, are you in charge of the distribution of the work to the various workers in the cutting department? A. Yes.

Q. Will you state to the court how you determine upon who [514] shall be one particular type of work, and how the work is distributed?

A. Well, the only way I can determine it is when someone is first put to work I will just let them do everything. I will give them the cutting ticket and probably have them make their own marker, cut the garment themselves, slope it, if there is any sloping necessary, cut their own trims, do everything.

After they have done that for a while, if I see that they can more or less do better one particular thing, for the sake of production I will have that person do that one thing as long as it is required. Then in the event one department is held up, I will just switch them right back.

Q. Are the employees of the cutting department, in so far as the work they do, are they interchange-

(Testimony of Louis Swartz.)

able? A. Oh, every one of them is.

Q. You mean by that you will shift one man or woman from one job to another job, depending upon what work is to be done.

A. Yes. Not I could. I have and I do do it.

Q. Now, do you have anything to do with the hiring of employees in your department?

A. Well, ordinarily the practice has been if someone would come out, sometimes they will come in and ask for me. Sometimes they will ask for Mr. Bothman. If they will ask for me, [515] I will interview them, and if I think they are desirable, I will walk in and say to Mr. Bothman, "There is someone here applying for a job. I think they are all right."

He will go out and interview them, and if his opinion agrees with mine, he will suggest I put them to work.

Q. As to their qualifications or ability for the particular work, do you pass upon that?

A. Well, the only way I could pass upon that is after they have worked there a while.

Q. Do you have the power to hire any employees independent of anyone else in the factory?

A. No. I interview them and I might recommend to Mr. Bothman that he put them on.

Q. What is the situation with respect to discharging employees? Do you have that right?

A. Well, I don't know. I have never tried that right.

Q. You have never fired anyone?

(Testimony of Louis Swartz.)

A. I have never fired anyone, so I don't know if I have that right or not.

Q. All right. Now, what experience have you had in the dress manufacturing industry, Mr. Swartz?

A. Well, for the past six and a half years I have worked for Lettie Lee. Prior to that I had a factory in New York, doing contracting there of my own. I believe I had that place for four years. And prior to that I worked for my [516] father.

Q. In what capacity?

A. Well, I started with my father as an errand boy and learning how to cut at the same time.

Q. So how many years experience have you had in the industry? A. Sixteen.

Q. Now, calling your attention to the month of June in 1941, did you have any conversation with any of the men cutters with respect to an increase in wages?

A. Well, only to the point that Joe Sardo came over and told me, "With the cost of living going up, the boys have all gotten together and they feel they should have an increase."

Q. He told you that? A. Yes.

Q. Did he initiate the discussion or bring up the subject? A. Yes.

Q. About when was that, can you remember?

A. Well, it was in the morning of the day, but I can't remember the date.

Q. Was that prior to the time that there was a meeting of the cutters in the cutting room?

(Testimony of Louis Swartz.)

A. Well, that was the same day; the morning of that evening.

Q. I see. Then what did you say to Mr. Sardo?

A. I told him I would speak to Mr. Bothman. [517]

Q. Did you speak to Mr. Bothman?

A. I went into Mr. Bothman immediately, and told him what was told me, and he suggested to have the boys wait after work and he will come out and talk to them.

Q. Did you so advise Mr. Sardo?

A. I did.

Q. Then was there a meeting in the cutting room on that day, June 11th? A. There was.

Q. At about 4:30? A. That's right.

Q. Will you state who was there?

A. You want them by names?

Q. Well, if you can remember their names.

A. Well, there was Vito, Don, Angelo, Nolan—I think I left one out—and Louis, and Mort Litwin, and myself.

Q. Was Mr. Bothman there?

A. He came out after 4:30.

Q. All right. Will you state the substance of the conversation at that time, as best you can remember it?

A. Well, Mr. Bothman come in, and the first thing he said was "Lou told me you boys wanted a raise." And I believe it was Joe Sardo spoke up and said, "Yes, with the cost of living going up

(Testimony of Louis Swartz.)

the way it has been, I think we should have one.” [518]

And Mr. Bothman said, “I am not going to argue with you or dicker with you. I will just offer you two alternatives. I don’t want your answer immediately. Think it over for”—I believe this was on a Thursday, or a Wednesday—he said, “Think it over for the rest of the week, and then let me know what you have decided.”

He said, “First, I will either give you a 15 cent an hour increase in wages, or if you stay on at the same wages that you are, when it gets busy I won’t put on an extra man, but will give the you boys overtime at time and a half.” He says, “But if you take the increase in wages, when it gets busy I can’t give you the time and a half overtime. I will have to put on an extra man to take care of the overflow of business.”

Q. All right. What did anybody else say, if they said anything?

A. Well, I think it was more or less of a chorus, said, “Well, that’s fair enough.”

Q. What happened? Any further conversation?

A. No, the meeting broke up that evening.

Q. Now, at any time during the course of that meeting, did Mr. Bothman say, “How many of you men belong to the union”?

A. No, not at that meeting, the first meeting.

Q. At that meeting did he say that, “the union is nothing but a bunch of shysters and they are not out to help you”? [519]

(Testimony of Louis Swartz.)

A. Not to my knowledge.

Q. Did Mr. Bothman say that, "The union officials are only out to help themselves," and that they would put in more cutters and that the present employees wouldn't get as much work if they joined the union as they were then getting?

A. I was right there with them, but I didn't hear it.

Q. Did Mr. Bothman say he would close the shop before he would operate under the union?

A. No, he didn't.

Q. Was there any mention or discussion of the union at that time? A. Not at that meeting.

Q. All right. When was the next time, Mr. Swartz?

A. I believe it was on the following Friday, Joe Sardo said, "Well, we have decided we want the increase in wages."

I said, "All right. I will go in and tell Mr. Bothman." And I went in and told Mr. Bothman.

He said, "Well, have them wait after 4:30." And at 4:30 he came out, and when I went in and told Mr. Bothman, I told him they had decided on the increase in wages, and when he came out the first thing he said—

Q. Just a minute before we get into the conversation. Was this meeting also in the cutting room?

A. Yes.

Q. Were the same individuals present as were present in the [520] first meeting? A. Yes.

(Testimony of Louis Swartz.)

Q. All right. Now, will you state what Mr. Bothman said, and what the others said?

A. He said, "Well, I hear you decided on the increase in wages. There is nothing more I can say about it. You have your increase in wages now."

He says, "One other thing. How many of you boys belong to the union?" And although they didn't answer individually, they all shook their heads "no", and it was just taken for granted that it meant "no."

Q. Was that before or after Mr. Bothman said that he would give them the increase?

A. That was after.

Q. Previous to making that statement, did he say what the increase would be?

A. Well, he told them at the first meeting it would be 15 cents an hour.

Q. I see. Was there any other conversation at that meeting? A. Not that I recollect.

Q. You were there throughout the entire time,— A. Yes.

Q. ——weren't you? A. Yes.

Q. Can you recall any other conversation at all in that [521] second meeting, other than what you have told us about?

Mr. Nicoson: He said he didn't. I object, and repetitious.

Mr. Shapiro: All right. I will withdraw it.

Q. (By Mr. Shapiro) Now, have you ever been asked to join the Cutters Local?

A. Yes, I have.

(Testimony of Louis Swartz.)

Q. Did you join it? A. No.

Q. There was a strike, I believe, only July 24th at the plant; is that correct? A. There was.

Q. When was the first time that you knew that there was a strike?

A. The morning, as I came down to work.

Q. How did you know that?

A. Saw the picket line there.

Q. And what did you do when you saw the picket line?

A. Well, I heard all the cutters were around the corner. I went around the corner there, and I think the first one I met was Joe Sardo, and I asked Joe if he was going up to work. He said, no, he is afraid to go up to work. He said, "All the cutters are in the restaurant there."

I said, "Well, if you are afraid to go up to work, if you want to go to work, get in my car and I will take you up." [522]

He said, "No. They all decided they are not going up to work."

Q. Did he say who "they" were?

A. Well, he didn't say. At one time he mentioned all the cutters were in the restaurant.

Q. Now, when you said that you offered to take him up to work in your car, will you explain that?

A. Well, our building has a garage in the basement, a parking garage, and you drive in there and park the car there, and go up in the elevator.

(Testimony of Louis Swartz.)

Q. Well, what did you do after he said they weren't going to work?

A. I went upstairs and waited for Mr. Bothman to come in.

Q. Now, had Mr. Bothman told you to ask these boys to come back to work?

A. No, he hadn't.

Q. How did you happen to ask them?

A. Well, it seemed only a normal question, because, oh, about a week before there were rumors going around—

Mr. Sokol: Just a minute. I object to the form of the question, as calling for the conclusion of the witness.

Trial Examiner Erickson: Read the question, please.

(The question was read.)

Q. (By Mr. Shapiro) (Continuing) —to go back to work?

Trial Examiner Erickson: Yes, he may answer. [523]

The Witness: A week before, there were rumors going around that there would be a strike called. Just when, no one seemed to know, and I went around to each boy individually, while they were working in the place, and suggested to them that if they ever come to work in the morning and find the picket line there, if they want to come up to work, not to try to force through the picket line, not to get into any fights, go back into their cars and drive into the garage and come upstairs.

(Testimony of Louis Swartz.)

Q. (By Mr. Shapiro) What did the boys say when you told them that?

A. They just said, "Yes," and it went at that.

Q. Did Mr. Bothman tell you to talk to the boys— A. No, he didn't.

Q. —along that line? A. No.

Q. Did he know that you had addressed the boys?

A. No. The only thing he knew, after the first morning of the strike I told him that I had told the boys to do that, and then I saw them all in the restaurant.

Q. And what did Mr. Bothman say?

A. He says he can't understand it. He can't understand why they didn't come up to work.

Q. By the way, do you know whether or not there have been pickets in front of the 719 building in which the Lettie Lee [524] plant is located any part of this week?

A. No, I can't honestly say.

Q. You don't know?

A. No, I never use the front door.

Mr. Shapiro: Will you stipulate, Mr. Sokol, that there have not been any pickets any part of this week?

Mr. Sokol: I don't know.

Mr. Nicoson: I will object to it, even if he will stipulate to it. I don't see any materiality whether they have pickets down there or not.

Mr. Sokol: I don't know.

Mr. Shapiro: I think that is the fact.

(Testimony of Louis Swartz.)

Mr. Sokol: That they have pickets?

Mr. Shapiro: That they have no pickets.

Mr. Sokol: Have it your way. Let me see. Pardon me just a moment.

(A short interruption.)

Mr. Sokol: I will stipulate to that, if you know that as a fact. I will accept your stipulation.

Mr. Shapiro: Well, when I say I know it as a fact, I mean simply this, that I have been in the vicinity of that building every day this week, and I have seen no pickets, and I understand from others that there have been no pickets there at all.

Mr. Sokol: I accept the stipulation. Is that a stipula- [525] tion?

Mr. Shapiro: That is a stipulation.

Mr. Sokol: Accepted.

Mr. Shapiro: Thank you.

Mr. Sokol: Does the Board accept it?

Mr. Nicoson: I don't accept it, but I don't offer any objection.

Q. (By Mr. Shapiro) Now, Mr. Swartz, after the strike was called on July 24th, did you thereafter talk to any of the boys who had gone out on strike? A. Yes, I did.

Q. Which ones did you talk to?

A. Don Quinn and Vito.

Q. Any of the others? A. No.

Q. Whom did you talk to first?

A. To Don Quinn.

Q. Will you state when you talked to him?

(Testimony of Louis Swartz.)

A. Out at my house on a Sunday morning.

Q. Had you talked to him at all previously?

A. No, I hadn't.

Q. How did he happen to come to your house?

A. I sent a message to him to have him call me up. He called me up and I asked him if he would come out to my house to see me, I wanted to talk to him. [526]

Q. And he came out? A. Yes, he did.

Q. Did you talk to him? A. I did.

Q. Did you tell Mr. Bothman that you were going to ask Mr. Quinn to come out to your house to talk to him? A. No, I hadn't.

Q. Did Mr. Bothman have any idea that you had done that? A. No.

Q. Why did you ask Mr. Quinn to come out to your house?

A. Well, I wanted to offer him an opportunity to come back to work.

Q. Did you have a conversation with him?

A. Yes, I did.

Q. Will you state the conversation?

Mr. Nicoson: Let's fix the time, please.

The Witness: Well, I was—

Mr. Nicoson: Wait a minute. I don't want to make an objection unless it is necessary, but I will make an objection unless he fixes the time on it.

Mr. Shapiro: I think he testified as to the time.

Q. (By Mr. Shapiro) Tell us when it was.

A. It was approximately a month after the

(Testimony of Louis Swartz.)

strike began, on a Sunday morning, about 10:30 in the morning? Right?

11:30. Mr. Quinn corrects me. It was 11:30. [527]

Q. Was anyone there besides you and Mr. Quinn? A. No, there wasn't.

Q. All right. Will you state the conversation, please?

A. Well, we spoke of quite a number of things. We opened the conversation with bowling.

Q. With what?

A. With bowling. I asked him if he was doing any bowling, like that. And he asked me. And we both decided we hadn't. And, oh, we spoke of a number of things before we actually got to talking of why I had him come out. Then I asked him what he thought about coming back to work, and he just wasn't sure. He said—

Mr. Nicoson: I object to that.

Q. (By Mr. Shapiro) Just tell us what he said, rather than your conclusion.

A. He says, "Well, I don't know what to tell you."

I says, "Well, do you want to come back to work, or don't you?"

He says, "Well, if one of the other boys would come back to work, I would go back with him."

I said, "Is that your strongest objection?"

He said, "Well, it isn't an objection," it is only that he is more or less afraid to go back to work, and if one of the other boys would go back with him, he would have felt better about it. [528]

(Testimony of Louis Swartz.)

So I says, "Well, the only thing I can do then is to offer you"—I told him that I thought quite a bit of him, not only in business, I had seen him quite often personally out of the place. I told him I thought quite a bit of him, and also Vito, and I told him if he felt that way, to get in touch with Vito, and if Vito wanted to, he could come back to work also. And I told him to call me the following day and let me know his decision one way or the other.

The following day he called and said they decided not to come back to work.

Q. Did you ever have any other conversations with Mr. Quinn?

A. No, that was the end of that.

Q. Prior to sending the message to Mr. Quinn and prior to talking to him, had Mr. Bothman asked you to contact any of the boys or talk to them?

A. No, he hadn't.

Q. Had any other officer or representative of Lettie Lee, Inc., asked you to do that?

A. No.

Q. After talking to Mr. Quinn, did you at any time tell Mr. Bothman what you had done?

A. Yes, after the following day I told Mr. Bothman what I had done.

Q. What did Mr. Bothman say? [528]

A. Well, he asked me why I did it. And I said that regardless of what he thinks, I still think that Don Quinn was just swayed by the mob, and that if he was sorry, that he would come back to work.

(Testimony of Louis Swartz.)

I thought personally that he did want to go back to work, but he was just afraid.

Q. What did Mr. Bothman say?

Mr. Sokol: I move to strike what he thought personally.

Trial Examiner Erickson: That wasn't a part of the conversation, was it?

The Witness: Well, out to my house he told me he was afraid to come back to work.

Trial Examiner Erickson: I mean that last statement you made wasn't in your conversation?

The Witness: No, that wasn't in the conversation.

Trial Examiner Erickson: It will be stricken.

Q. (By Mr. Shapiro) What did Mr. Bothman say after you had told him that you had talked to Mr. Quinn?

A. Well, he told me I shouldn't have done it.

Q. All right. Now, you said something about having had a conversation with Vito. Is that right?

A. That's right.

Q. When did you have that conversation?

A. Well, I can't replace it exactly. It was approximately two to three weeks after the conversation with Mr. Quinn, I called Vito. [530]

Q. Was that a telephone call? A. Yes.

Q. Did he call you or did you call him?

A. No, I called him.

Q. What did you state to Mr. Cimarusti?

A. First I asked him—well, I asked him how his wife was getting along. I heard she was sick. Then

(Testimony of Louis Swartz.)

I asked him if Don had approached him and told him what I spoke to Don about, and he said he had. And I asked him what his opinion was in the matter. And he said, well, he felt the same way about it as Don. He said they decided to take that step and they felt once they took that step, that they shouldn't try to retract.

Q. Was there anything else said?

A. And I asked him, well, would he want to come back to work?

And he said, "No," he don't think he can.

Q. Was that all the conversation?

A. That's all.

Q. Did you tell Mr. Bothman that you were going to talk to Mr. Cimarusti?

A. No, I didn't tell him at this time, but just when I got through with the call, Mr. Bothman walked over, and he happened to hear the tail end of the conversation. And I told him who I had called, and what I had done. [531]

Q. What did he say?

A. Well, he just didn't say anything. He walked away. I probably would have gotten the same answer as the first time I told him.

Mr. Ryan: I move to strike out what he probably would have done.

Trial Examiner Erickson: That will be stricken.

Q. (By Mr. Shapiro) Now, you never talked to any of the other men that went out, did you?

A. No, I haven't.

(Testimony of Louis Swartz.)

Q. How did you happen to select these two boys to talk to?

A. Well, I have liked them personally.

Q. You had been social acquaintances previous to this time?

A. Well, we all did go bowling at least once a week; not just with those two boys, but, as a matter of fact, all the cutters. And Mr. Quinn was out to my house quite a number of times alone.

Q. And you considered that you were closer to those two boys than to the others?

Mr. Sokol: He didn't say that.

Mr. Nicoson: I object.

The Witness: No, I enjoyed their company.

Trial Examiner Erickson: Sustained.

Mr. Nicoson: I move that the answer be stricken.

Mr. Shapiro: It may go out. [532]

Trial Examiner Erickson: It may be stricken.

Mr. Shapiro: Cross examine.

Cross Examination

By Mr. Nicoson:

Q. Mr. Swartz, have you got your gun on you today? A. No, I haven't.

Q. You had it on you when you were in the hearing room yesterday? A. I did.

Q. You didn't bring it in today?

A. No, sir.

Mr. Shapiro: What was that? I didn't hear those questions.

Mr. Nicoson: Read it to him.

(The record was read.)

(Testimony of Louis Swartz.)

Mr. Shapiro: If the Court please, I am going to move to strike the questions and the answers, and I am going to object to the questions on the ground that they are entirely incompetent, irrelevant and immaterial. Counsel for the Board and Mr. Sokol are trying to make an issue out of something that isn't an issue at all. They well know that this man has a permit to carry a gun.

Mr. Sokol: Let's see the permit.

The Witness: I showed it to you in the hall.

Mr. Nicoson: Wait a minute. I say that I have a right [533] to show what kind of people we are dealing with. This witness has testified that he came to this Federal Building and in this Federal court room with a gun on him. I accosted him in the hall about it and found out he had it, and I told him to get it out of the Federal Building immediately.

Mr. Shapiro: And he did.

Mr. Nicoson: And he did. I asked now if he had it on him today. I want the record to show what kind of people we are dealing with.

Mr. Shapiro: I want your Honor to understand that he had a permit to carry it. I didn't know that he had it, but as soon as I learned about it, I told him to immediately remove it from the building, permit or no permit. And he has no gun today. You may show the permit to anyone that wants to see it, and I will be very happy to have the witness state why he had to get a permit to carry a gun.

(Testimony of Louis Swartz.)

(Thereupon the witness exhibited the permit to counsel.)

Mr. Sokol: That isn't the permit he showed me yesterday.

The Witness: I beg your pardon. It is.

Mr. Sokol: No, it isn't.

The Witness: You are a liar. That is the permit.

Trial Examiner Erickson: Wait a minute. The objection is overruled. Proceed with the examination.

Mr. Sokol: Mr. Examiner, I want the record to show this: I am ready to take oath that yesterday this man showed me a [534] permit with the name on it of R. A. Swartz.

The Witness: Now, wait a minute.

Mr. Sokol: Will you allow me to finish my statement? You have already called me a liar once.

The Witness: I am sorry. I apologize.

Mr. Sokol: The permit carried the initials, "R. A. Swartz." At this time he is showing me a permit bearing the name, "Louis A. Swartz." I made note at the time of the permit bearing the name, "R. A. Swartz."

The Witness: Your Honor, may I hold it up and show it to you?

Trial Examiner Erickson: Proceed with the examination.

The Witness: I had it folded in my folder, and now he sees it open.

Trial Examiner Erickson: Will you please answer questions when you are asked.

(Testimony of Louis Swartz.)

Q. (By Mr. Nicoson): You say you worked six and a half years for Lettie Lee?

A. Yes, sir.

Q. As a matter of fact, Lettie Lee has only been organized for three years; isn't that so?

A. Well, I worked for Lettie Lee, Inc. and Lettie Lee before that, and Lettie Lee, Inc. before that.

Q. When was it you worked for Lettie Lee before that, before all these "before thats"? [535]

A. Well, I heard it was a corporation before it was privately owned.

Q. You don't know that?

A. No, I don't. That is only what I heard yesterday.

Q. Only what you heard yesterday. Then you don't know what it was when you first worked for it?

A. No. All I know is it was Lettie Lee.

Q. So if this corporation wasn't formed until 1939, you haven't worked for this corporation six and a half years, have you?

Mr. Shapiro: I submit that is argumentative.

Trial Examiner Erickson: Proceed now.

Mr. Shapiro: Pardon me?

Trial Examiner Erickson: I said, "Proceed."

Q. (By Mr. Nicoson): I believe you stated on your direct examination that you made no distinction between sloping and other cutting operations?

A. No, I don't.

Q. Well, are they one and the same?

(Testimony of Louis Swartz.)

A. In what way do you mean, are they one and the same?

Q. I am asking you, sir.

A. They are all cutting.

Q. Is sloping the same as other cutting operations? A. No.

Q. Then there is some distinction between them, is there? [536]

A. Well, there are three different kinds of cutting the cutter actually does himself.

Q. Then there are distinctions, aren't there?

A. Definitely.

Q. I believe you also testified that you thought that it takes more ability to slope than it does to cut? A. I think so.

Q. Will you tell us why you pay much less for sloping than you do for cutting then?

Mr. Shapiro: That is objected to as incompetent, irrelevant and immaterial, and calling for a conclusion on the part of the witness. And I submit that the witness has testified he has nothing to do with the hiring of the people, except that he interviews them.

Trial Examiner Erickson: The objection is overruled.

The Witness: Well, I don't set any salaries with them.

Q. (By Mr. Nicoson): That isn't what I asked you.

Mr. Nicoson: Will you please read the question?

(The question was read.)

(Testimony of Louis Swartz.)

The Witness: I don't pay less.

Q. (By Mr. Nicoson): Do you know why the company does?

A. I haven't the slightest idea.

Q. You never had any discussions with anybody about it? A. No.

Q. Do you know whether or not it is your policy or the [537] policy of the company to pay the employees on the basis of the degree of the importance of the work they do?

A. Not that I have known of.

Q. Will you pay a sweeper as much as a cutter?

A. No.

Q. Would you pay a hemmer as much as you do a cutter? A. Would I pay them?

Q. Yes.

A. You mean if I had my own place of business?

Q. That is right.

A. It depends on the person.

Q. Do you know whether or not Lettie Lee pays a hemmer as much as a cutter?

A. I wouldn't know. I don't have anything to do with the finances.

Q. As a matter of fact, Mr. Swartz, you know the cutters are the highest paid employees in the shop? A. In the Lettie Lee?

Q. In the Lettie Lee shop right now, this very minute?

A. I have heard rumors to that effect.

Q. You know it of your own knowledge, don't you? A. Not from payroll records.

(Testimony of Louis Swartz.)

Q. Can you name anyone else in the plant that makes \$45 a week, doing an operator's job, I mean below the rank of a supervisor? Name just one.

[538]

A. A sample maker.

Q. What does he get?

A. I don't know how much she makes, but more than the average.

Q. Do they get more than \$45?

A. I don't know. They are higher priced than the operators.

Q. Can you name a single person below the rank of a supervisor who makes \$45 or above per week right now?

A. Yes, I believe one of the designers makes more than that.

Q. All right. Now, name somebody else. One more. A. Another designer.

Q. Outside of the designers, now, name somebody.

A. That would be beyond me, beyond any records that I would see.

Q. I am not asking you about the records. I am asking you what you know.

A. I don't know anything about it outside of the cutting room.

Q. As a matter of fact, you don't know whether the designers get \$45.

A. This particular one I know gets more than \$45, because I have been quite friendly with her.

Q. And that is what she told you?

(Testimony of Louis Swartz.)

A. Yes.

Q. As a matter of fact, you haven't looked at the record [539] yourself? A. No.

Q. You only know that by what she told you?

A. That's right.

Q. Now, you say after the cutters have finished with the garment, that it couldn't go direct to the operator. Did I understand you to testify along that line?

A. I said that it could go direct to the operator, but that it would have to come back four or five times for needed things.

Q. Why would it have to come back four or five times?

A. Well, if they didn't come back to find out which was the right side of the material, the side they should sew it up on, they would sew it on the wrong side, and they would have to rip it out and then come back to find out how to sew it in, and then do it all over again.

And if they didn't come back to have the darts stamped in, if they just sewed it up as their minds saw fit, if it didn't fit properly, the piece would have to be ripped out of the dress, and have to go back and be stamped and then go back and be put in.

Q. As a matter of fact, the assorters are for the convenience of speeding up the operators in the sewing room?

A. I wouldn't say the convenience. I would say necessity.

(Testimony of Louis Swartz.)

Q. Necessity. In order to make the thing function properly [540] and speed up the operators, don't you have to go to the work of checking out a waist, a skirt, and whatever it is, and have the assorters put them all together, so that the operator can start sewing the minute she gets it; isn't that it? A. Yes.

Q. That is. Sure. Do you have any jurisdiction over the assorters yourself?

A. Over what?

Q. Over the assorters?

A. Well, as much as I have over the cutters.

Q. Well, you have a head assorter there, don't you?

A. No. They have the girl that does the billing for them for the work that goes out of the house.

Q. That is Sarah Giochetti?

A. You mean now, or before the strike?

Q. Before the strike. A. Yes.

Q. She was generally in charge of the assorters, wasn't she?

A. Well, she would take the bundles as they came off the cutters, and if there was anything to be sent out for pleating or tucking, she would bill it out.

Q. And she would give it to the assorters for the various work? [541] A. Yes.

Q. And for that she got a little more money than the assorters, didn't she? A. Yes.

Q. About four or five dollars a week?

(Testimony of Louis Swartz.)

A. No, I don't think it was that much.

Mr. Sokol: He said not that much.

The Witness: She got more, but I don't think it was that much.

Q. (By Mr. Nicoson): About \$1 more on the week; is that right? A. Yes.

Q. I believe you also stated that the assorters are doing substantially the same thing now that they did prior to July 24th?

A. Oh, definitely.

Q. Definitely. Is Giochetti there now?

A. No, she isn't.

Q. She is not there now. Now, you mentioned something about a stock room girl? A. Yes.

Q. I believe I understood you to testify that she brings the material to the cutters and takes it away from them? A. That's right.

Q. What do you mean when you say she takes the material [542] away from the cutters?

A. When they were all finished with cutting the particular type of material, and didn't need it any longer, she would take it and put it back where it belongs.

Q. She doesn't do any cutting herself?

A. No.

Q. Do you know what her pay is?

A. No, I don't.

Q. Her rate of pay? A. No.

Q. You say you were solicited by the union to join? A. Yes.

Q. But you did not join? A. No.

(Testimony of Louis Swartz.)

Q. Did you go to Mr. Sokol's office around the 14th or 15th of September?

A. No. It was the second day of the strike.

Q. That was July 25th?

A. It was on a Friday.

Q. July 25th was the second day.

A. It was on a Friday, the second day after the strike.

Q. If the second day of the strike was July 25th, that is it? A. That's right.

Q. And you went up there by yourself, didn't you? [543] A. Yes.

Q. Did you know the other cutters were going up there? A. Yes.

Q. Why didn't you go up with them?

A. Because at the time the cutters were at the union hall, and Scotty had asked me to take up a message to Mr. Bothman, and I went up there, and during that time Scotty had sent all the cutters to Mr. Sokol's office, and when I returned to the union, Scotty said, "All the cutters just left for Mr. Sokol's office. Go up there. You will meet them there."

When I got there, they had already left.

Q. You took this message to Mr. Bothman?

A. Yes.

Q. What was it?

A. He told me to tell Mr. Bothman all the cutters have decided not to come back to work.

Q. And Scotty is Harry Scott; is that correct?

(Testimony of Louis Swartz.)

A. I don't know. That is all I know him as. He is an officer of the union.

Q. An officer of the union. And what did Mr. Bothman say about that?

A. Well, he just didn't give me any answer.

Q. Did you then go back to Mr. Scott and report what happened? A. That's right. [544]

Q. What did you tell Mr. Scott?

A. I just told Mr. Scott he wouldn't give me any answer on this message.

Q. And that was July 25th that this occurred,—right? A. Yes.

Q. Then you went up to Mr. Sokol's office?

A. That's right.

Q. For what purpose did you go up there?

A. Well, I don't know.

Q. For what purpose did you go to the union hall?

A. The boys asked me to stay with them to see just what was going to develop.

Q. What boys? A. All the cutters.

Q. Every one of them?

A. The six of them.

Q. By that you mean Sardo,—right?

A. Sardo, Baliber, Castella, Quinn, Cimarusti and Berteaux.

Q. Where were they when they asked you?

A. Well, at the time when I saw Mr. Sardo the first morning of the strike, he asked me if I minded coming up to the union with them. I said, "I am going upstairs first, and I will see."

(Testimony of Louis Swartz.)

Q. You went upstairs and had a conversation with Mr. Bothman, didn't you? [545]

A. No. I waited for Mr. Bothman to come in.

Q. And he come in? A. Yes.

Q. And no conversation?

A. There was a conversation, but not in regard to that.

Q. Didn't even say "Hello"?

A. Oh, yes.

Q. What did you talk about?

A. I just told him the cutters didn't come up to work. He said, "Do you know why?" I said, "No." He said, "Where are they now?" I said, "Down at union headquarters." And he just walked away.

Q. Were you to find out why they didn't come in? A. No.

Q. Are you sure of that?

A. Positive. There was a strike on.

Q. What happened when you got up to Mr. Sokol's office?

A. I went in and told the girl who I was, and she said, "They just left." I said, "Have you any idea where they have gone to?" And she said, "No, I haven't." And I left to see whether or not I could find them.

Q. Did you find them?

A. Not that day. The following day.

Q. Then you went back to the Lettie Lee plant?

A. No, I went home. [546]

(Testimony of Louis Swartz.)

Q. You went home. When did you go back to the Lettie Lee plant?

A. Not until the following Monday morning.

Q. Did you have a conversation with Mr. Bothman at that time?

A. Nothing more than to the extent that I told him I decided not to go ahead and fool around and wait for the boys, but I am going back to work.

Q. And what did he say about that?

A. He said, "Well, go ahead."

Q. Was anything said about how you were going to run the cutting department?

A. No, there wasn't.

Q. Not a word? A. No.

Q. You didn't say anything to him about how you were going to run the cutting department?

A. No, I didn't.

Q. You were the only cutter there; is that right?

A. Mr. Mort Litwin was there, Dolly Richards and Eunice Usher.

Q. Just the four of you? A. Yes.

Q. Now, you do the same type of work down on the 7th floor as you do up on the 12th floor? [547]

A. All except the cutting.

Q. All except the cutting? A. Yes.

Q. Now, I understand you to say that you help mark, when necessary, and you help cut when necessary, and you grade all the patterns yourself?

A. Yes, sir.

Q. That is in case they are rushed?

A. Yes, sir.

(Testimony of Louis Swartz.)

Q. Or you do any other of the jobs there are in the cutting room that are necessary?

A. That's right.

Q. Do you ever go over and assort?

A. Yes, I have done that.

Q. How often do you do that?

A. Very seldom.

Q. Very seldom? A. Yes.

Q. And that is only in case of a rush?

A. That's right.

Q. Do any of the cutters ever go over and assort?

A. No, they don't.

Q. And the assorters don't come over and cut?

A. No, not to the same extent they do.

Q. Well, they don't come over and cut? [548]

A. Well, they might be short a facing, or something, and will cut it out themselves rather than to bother a cutter.

Q. But they don't ordinarily do the work a cutter does? A. No.

Q. Excuse me just a minute, please.

I believe you testified that about a week or so before the strike you made arrangements with the boys to come in through the basement, in the event there was a strike? A. That's right.

Q. And that you had heard a rumor there was going to be a strike? A. That's right.

Q. Where did you hear it?

A. Oh, it was a general rumor. From the boys themselves that spoke about it.

Q. They talked to you about it?

(Testimony of Louis Swartz.)

A. Not directly. It was just general through the industry.

Q. You mean the boys, the six cutters didn't tell you about the strike?

A. They didn't tell me that they are going out on strike.

Q. Did they talk to you about a strike?

A. No, nothing direct.

Q. Well, whom did you talk to about the strike?

A. I didn't talk to anyone in particular about it.

Q. Did you talk to anybody not in particular?

[549]

A. No.

Q. You mean to say that you never talked to a soul about the possibility of a strike?

A. Well, as I stated, I went to them all and told them there is a possibility that there might be a strike.

Q. You told the boys there might be a possibility of a strike?

A. No. As a matter of fact, I think I said to them, "I suppose you have heard that there is going to be a strike called."

Q. Yes. Where did you get your information to talk to them? A. It was just general gossip.

Q. Based on general gossip, you went and asked these boys that question,—right?

A. Well, now I recollect something else, what made me get the gossip more directly. I had a committee out at my house of three of the union

(Testimony of Louis Swartz.)

men and the entire—well, the purpose of the meeting was that they wanted to know in the event that there was a strike, what I would do.

Q. That is right?

A. And during that time they happened to state to me, "I suppose you know there will be a strike soon, because the union agreements will expire." And that is where I heard that there will be a strike.

Q. Were any of the cutters present at your home at that time [550]

A. No, they weren't.

Q. Were there any other employees of Lettie Lee? A. No.

Q. Based upon that, you then made arrangements for these boys to come into the plant by way of the garage in case there would be a strike?

A. That's right.

Q. Now, you testified about having Don Quinn out to your house? A. Yes.

Q. You said you thought that was about a month after the strike? A. That's right.

Q. Are you certain about that?

A. No, I am not positive.

Q. It could have been in October, couldn't it?

A. Let's see. Yes, it could have been in the early part of October.

Q. Mr. Quinn testified that it was in the early part of October.

A. Yes. Well, that is possible.

Q. That is possible. Now, after that, after you

(Testimony of Louis Swartz.)

talked to Mr. Quinn, then you had a conversation with Mr. Bothman about that?

A. No conversation. [551]

Q. Well, you told him?

A. Yes, I told him.

Q. You told him what you had done, and he said you should not do it? A. That's right.

Q. And after he told you you should not do it—

A. He told me I should not have done it.

Q. And after he told you you should not have done it, you went out and called Vito?

A. That's right.

Q. About two weeks later?

A. That's right.

Q. And Mr. Bothman came up and heard that?

A. Yes.

Q. And at that time he didn't tell you you should not have done that, did he? A. No.

Mr. Nicoson: That is all.

Mr. Sokol: May I have a minute, please?

Trial Examiner Erickson: We will recess for five minutes.

(A short recess.)

Trial Examiner Erickson: The proceedings will come to order.

Q. (By Mr. Sokol) Prior to the strike, the workers came [552] to work in the front entrance of the building on Los Angeles Street; is that right?

A. As far as I know, yes.

(Testimony of Louis Swartz.)

Q. And then before the strike you say you personally took the precaution to see that they came in the side entrance down the alley; isn't that right?

A. I told the cutters if they wanted to prevent any trouble, rather than to start any fights outside, any violence, to come in the side door.

Q. In order to save time, you just listen to my questions. You personally made the arrangements?

A. That's right.

Q. Now, whom did you make the arrangements with? A. With these six boys.

Q. No, to get them in the side entrance. You had to make arrangements with the building, didn't you?

A. No, you don't have to. It is a public garage.

Q. But didn't you know you were going to have guards down there? A. No, I didn't.

Q. You have seen guards down there, haven't you, at the side entrance?

A. Not prior to the strike.

Q. At the time of the strike?

A. Yes, I have. [553]

Q. And you knew that arrangements were being made to have the people come in the side entrance? A. No, I didn't.

Q. You just got that idea by yourself?

A. That's right.

Q. Without talking to Mr. Bothman?

A. That's right.

Q. You know that throughout your testimony

(Testimony of Louis Swartz.)

here on the witness stand you stated you did certain things and then later you told Mr. Bothman. That always happened, first you did it and then reported to Bothman? It didn't happen the other way around?

A. At the times I testified it did.

Q. Mr. Bothman himself has testified from the witness stand that on occasion he has asked people who sought employment as to whether or not they belonged to the union. Do you know that?

A. No, I don't. I know he testified that, but I am not there when he interviews people seeking employment.

Q. Well, you said that you and he both passed judgment on some of the people seeking employment?

A. No. I said I interviewed them first, and if I thought I would like to have them in the cutting room, I would go to Mr. Bothman and tell him, "There is someone out there seeking employment," and he would speak to them. [554]

Q. Did you ever talk to Mr. Bothman about any union? A. No.

Q. Never heard a word in the plant from Mr. Bothman concerning a union? A. No.

Q. In all the time you worked there?

A. No, I haven't.

Q. Now, when you hire a cutter, you ask the cutter how many years experience he has had, don't you? A. I don't hire them.

Mr. Shapiro: I will object to the question. It

(Testimony of Louis Swartz.)

assumes a fact not in evidence, that he hires any cutters.

Trial Examiner Erickson: Sustained.

Q. (By Mr. Sokol) When you interview a cutter, do you ask him his experience?

A. Certainly.

Q. And what do you ask him?

A. Well, the very first thing I ask him is his name, his address; phone number if any; how long he has worked in the line; who his previous employers were; how long he has been with them; what type of work he did there. And I write all that down on a paper, and that is what I take in to Mr. Bothman.

Q. Then you do ask him what experience he has had as a cutter? [555] A. Yes.

Q. You did not intend to go out on strike, did you? Or, did you intend to go out on strike?

A. Well, frankly, my mind wasn't made up, and I told the boys to the same effect.

Q. But you did go out the day of the strike, and you remained away for a few days?

A. For two days.

Q. During that period you went to the union hall, didn't you? A. That's right.

Q. And spoke to the officials?

A. That's right. I told the union officials the same thing, that I didn't know.

Q. You spoke to me?

A. No, I spoke to Scotty. And he asked me how I stood. I told him, frankly, I hadn't made up my

(Testimony of Louis Swartz.)

mind, I wanted to see which way the land lies before I make up my mind. I told that to Mr. Scott and also to those six boys.

Q. And you didn't tell Mr. Bothman what transpired? A. No, I hadn't.

Q. Didn't say a word to him?

A. No. He asked me the same thing, whether I am going to work or I am going to stay out. And I told him the same identical thing, "I would like to wait a couple days and see [556] what is what before I make up my mind."

Q. Do you have any stock in the concern?

A. No, I haven't.

Q. How old are you?

A. Twenty-nine.

Mr. Sokol: That is all.

Redirect Examination

Q. (By Mr. Shapiro) Mr. Swartz, prior to the strike did you park your automobile in the garage in this building?

A. Yes, during the rainy seasons.

Q. You didn't start parking it there just because there was a strike in progress, did you?

A. No, I hadn't.

Q. Now, when was this conversation that you testified to on cross examination, with, I think, two or three of the union officials at your home?

A. Oh, I would say it was about a week or two before the strike.

Q. At that time did you know whether or not these six men who went out on strike belonged to the union?

(Testimony of Louis Swartz.)

A. No, I didn't. You mean before the conversation with these men, or after?

Q. Before? A. No, not before.

Q. When did you first find out that they belonged to the [577] union?

A. Well, these three men that were out to the house said, "A few of the boys have already signed cards," but he couldn't tell me their names.

Q. I think it is a correct statement of the evidence in this case that every one of the boys, according to the cards in evidence, signed in the union on July 21, 1941. That is three days before the strike. Did you have this conversation at your house prior to July 21st? A. Yes, I had.

Q. Did any of the boys, these six boys, at that time tell you they had joined the union?

A. No, they hadn't.

Mr. Ryan: Mr. Examiner, there is also testimony in the record that some of these boys stated that they had joined before, but signed up again on that day, on the 21st, so there won't be any confusion about it.

Trial Examiner Erickson: The record will speak.

Q. (By Mr. Shapiro) Now, I think you were asked as to the percentage of sloping on a garment as distinguished from the cutting. Are there ever instances when there is a far greater amount of sloping on a garment than cutting?

A. Yes, there are.

Q. Will you explain that, please?

A. Well, it depends on the style of the garment.

(Testimony of Louis Swartz.)

There is [558] one style in particular I have in mind in this past season. Well, I would say 90 per cent of the garment was tucked. The only thing that had to be cut was two pieces of the skirt, and a few pieces of facing to go around the neck.

Q. Mr. Swartz, do you have your wallet, or do I have it? A. Yes, I have it.

Q. Did you show this license to Mr. Sokol yesterday? A. Yes, I did.

Mr. Sokol: I object to that as immaterial.

Mr. Shapiro: It was brought out on cross examination. I certainly have a right to show our side of it.

Trial Examiner Erickson: Proceed.

Mr. Nicoson: It wasn't brought out on my cross examination or Mr. Sokol's. There was a colloquy among a lot of people around here, in which it was mentioned, but it was not brought out in my cross examination.

Mr. Sokol: This is going into something which I consider immaterial.

Trial Examiner Erickson: He may answer the question.

Q. (By Mr. Shapiro) Did you show it to Mr. Sokol yesterday? A. Yes, I did.

Q. Is this (indicating) the exact position that license was in when you showed it to him yesterday? A. It is.

Q. In your wallet? [559] A. It was.

Q. As it now appears here?

A. That's right.

(Testimony of Louis Swartz.)

Mr. Shapiro: Let the record show that the witness is referring to his wallet in one of the cellophane compartments.

Mr. Nicoson: I object to that, unless it is introduced in evidence.

Trial Examiner Erickson: Overruled. Proceed.

Mr. Shapiro: That the license to carry concealed firearms is in the witness' wallet folded under the cellophane compartment, so that the printed and typed matter is visible. Now, I will ask permission to show it to the Examiner, so that I can then make a statement as to how it appears in that position.

(The wallet was handed to the Trial Examiner for examination.)

Mr. Shapiro: A portion only of the last letter of the first name is visible, and from where I am looking at it, it appears to be about half of the letter "s".

Will your Honor confirm that for the record?

Trial Examiner Erickson: Yes, I saw that.

Mr. Shapiro: Thank you. Now, will you—

The Witness: Do you want me to take it out?

Mr. Shapiro: Will you remove that?

(The witness did as requested.) [560]

Mr. Shapiro: Let the record show that the license is No. 741, and it is issued in the name of Louis A. Swartz, 6226 Drexel Avenue, Los Angeles.

Mr. Nicoson: May I have a continuing objection to all of this?

(Testimony of Louis Swartz.)

Trial Examiner Erickson: You may.

Q. (By Mr. Shapiro) Is this your license?

A. Yes, sir.

Q. And you are Louis A. Swartz?

A. Yes, sir.

Q. This is the license you showed to Mr. Sokol yesterday? A. Yes, sir.

Mr. Shapiro: So that the record will be complete, it was issued in Los Angeles on December 17, 1941, by E. W. Biscailuz, Sheriff, by A. C. Jewell, Under-Sheriff.

Q. (By Mr. Shapiro) Is that your signature on the license? A. That's correct.

Q. Indicating the lower left hand corner?

A. Yes.

Q. Do you have any other license, other than this one, or did you have any other license when you were in the court room yesterday?

A. My driver's license.

Q. I mean a license to carry a gun?

A. No. [561]

Q. Do you have the gun with you today?

A. No, sir.

Q. Why not?

A. I was instructed it was against the law to carry it in a Federal building.

Q. Who told you that? A. Mr. Sokol.

Q. And you took his word for it?

A. Yes, sir.

Mr. Shapiro: That is all.

(Testimony of Louis Swartz.)

Cross Examination

Q. (By Mr. Nicoson) I think you just testified that there was more sloping than cutting; is that right?

A. On some particular garments, there is.

Q. As a general rule, that isn't true though, is it?

A. Well, that depends upon the individual season, according to our lines. Some seasons have passed where only a small percentage of the dress would have any sloping to do on it, at all; as in particular right now. The sloper probably has only about an hour's work a day right now. There are certain lines where you have to have two or three girls to do the sloping because of the styles. That is all problematical.

Q. Now, I think you also testified that you made the arrangements with the six boys to come in the side door? A. To drive into the garage. [562]

Q. Why didn't you make that with Mr. Litwin?

A. Because he drives in with me every morning.

Q. How did you know he was coming in?

A. Because he lives with me.

Q. Did you tell him in case of a strike that was the thing to do? A. No.

Q. Now, don't you get a bonus payment?

A. No, I don't.

Q. You do get about \$10 every week more than the other cutters, don't you? A. I do.

(Testimony of Louis Swartz.)

Mr. Nicoson: That is all.

Trial Examiner Erickson: I have just one more question. Who were the other three cutters besides the six complainants in the case? You said there were ten.

The Witness: With the other girls, Eunice Usher, Dorothy Richard and Kathryn Lembke.

Q. (By Mr. Nicoson) Let me ask you: At the time of the strike Miss Lembke wasn't there, was she? A. No, she wasn't there.

Q. And Dorothy Richard was employed to take her place?

A. She was there. Not to take her place.

Q. Well, in her stead then? A. No. [563]

Q. Well, if Miss Lembke had stayed on, hadn't gone on vacation or leave of absence, you wouldn't have hired Richard, would you?

A. Lembke had left just when the slow season had set in. If she hadn't left, she probably would have had to stay home for periods because there wouldn't be any work for her.

Q. If there wasn't any work for her, why did you hire Richard?

A. I hired Richard, I think it was two months after Lembke left.

Q. Are you sure that the records will show that?

A. I am positive of it.

Q. Well, whatever the record shows is correct?

A. I am positive that the records show that Dorothy Richard was hired a couple of months after Lembke left.

(Testimony of Louis Swartz.)

Q. I show you a book, which has been furnished to me by counsel for the respondent, which has been identified by Mr. Bothman as the payroll, and I direct your attention to a page which is not yet in evidence, but on which appears at the top of the column May 9, 1941, and tracing over from Dorothy Richard, it shows that is the first time that she received pay. A. May 9th?

Q. 1941. A. Yes. [564]

Mr. Shapiro: What was that date, counsel?

Mr. Nicoson: May 9, 1941, which is not two months after Lembke left.

The Witness: What is it? One month?

Q. (By Mr. Nicoson) It is no month at all. She testified she left at the end of May.

A. When is Lembke's last day?

Q. At the end of May.

A. I mean as the records show?

Mr. Nicoson: I would say that would be May 9th, wouldn't you? The second line date and bring that over?

The Witness: Where is the last line?

Mr. Shapiro: Well, that is the last entry on this page.

Mr. Nicoson: This page comes like this, you see (indicating) for the continuation, as I understand it.

Then it comes up here.

Q. (By Mr. Nicoson) Now, as to Miss Lembke, it is May 30th, am I right about that? And that is the last pay she got?

(Testimony of Louis Swartz.)

A. May 30th. And the other one came on—

Q. On May 9th.

Mr. Shapiro: So that the reverse, apparently, is true.

Mr. Nicoson: Never mind. Let's let the witness testify. He testified she came on two months after Lembke left.

Mr. Shapiro: May I ask a question on voir dire? I don't [565] think the witness knows anything about these books.

The Witness: I don't. I am just in charge of these cutters.

Mr. Nicoson: He said the record would bear him out; and the record doesn't.

Trial Examiner Erickson: Proceed.

Mr. Nicoson: That is all.

Redirect Examination

Q. (By Mr. Shapiro) Are you familiar with this payroll book?

A. Never seen it before, until just now.

Q. Do you know, of your own independent knowledge, when Miss Lembke left on her leave?

A. Not exactly.

Q. Do you know, of your own independent knowledge, when Miss Richard came to work?

A. Not exactly.

Q. When you said that you thought Miss Richard came two months after Miss Lembke went on her leave, what is that,—your best recollection?

A. It was to my own recollection.

(Testimony of Louis Swartz.)

Q. And you didn't check that with the records?

A. No, not at all. If I had, I wouldn't have made that statement.

Q. You don't keep the books, do you? [566]

A. No, never go near them.

Q. You said that there were ten cutters. Was that your testimony?

A. At the time of the strike there were ten cutters working.

Q. Did that include you? A. Yes.

Q. That did not include, however, Miss Lembke, who was on leave? A. No.

Q. Did that include David Thain? A. No.

Q. Do you know when David Thain left Lettie Lee?

A. Well, only from his testimony this morning.

Q. Do you know when he returned?

A. He returned in December; either the end of November, or the early part of December, of last year.

Q. So that if Miss Lembke and David Thain are included in the cutters, not those there at the time, but in the cutters— A. Yes.

Q. —there would be 12 instead of 10?

A. Yes.

Mr. Nicoson: I object to that.

Trial Examiner Erickson: Sustained.

Mr. Shapiro: Nothing further.

Mr. Nicoson: That is all. [567]

Trial Examiner Erickson: Step down.

(Witness excused.)

Mr. Shapiro: Will you take the stand, Mr. Bothman?

SAM BOTHMAN,

called as a witness on behalf of the respondent, having been previously duly sworn, was examined and testified further as follows:

Direct Examination

Q. (By Mr. Shapiro) I hand you the payroll records of Lettie Lee, Inc., which you produced here. Will you turn to these records and state from the records when Miss Lembke left on her leave of absence?

Mr. Nicoson: I object to the term "leave of absence."

Trial Examiner Erickson: All right. Reframe the question.

Mr. Shapiro: When Miss Lembke left? Strike out "leave of absence."

It is for the Court to determine why she left, and what the nature of the leave was.

Trial Examiner Erickson: Isn't that already in the record, Mr. Shapiro?

Mr. Shapiro: No, I don't think that sheet was put in.

Mr. Nicoson: No, that wasn't introduced.

The Witness: This must be the date right here, June 6, 1941. You see, here (indicating) is Kathryn Lembke, and you [568] follow it clear to here, and this is the week of June the 6th.

(Testimony of Sam Bothman.)

Q. (By Mr. Shapiro) Now, is it the week of June the 6th, or is it the week of May 30th?

A. The ending of the week of May 30th. We will put it that way.

Q. She was paid to and including May 30th; is that right? A. That's right.

Q. So that she left on May 30th?

A. That's right.

Mr. Shapiro: Now, I will offer in evidence at this time as Respondent's Exhibit 2, this sheet of the payroll record.

Trial Examiner Erickson: What is the purpose of the offer?

Mr. Shapiro: To show when Miss Lembke left.

Trial Examiner Erickson: Is there any dispute about it?

Mr. Nicoson: No dispute about it.

Mr. Shapiro: Then can we stipulate?

Mr. Nicoson: I will stipulate that the record shows that the last pay she received was in the week ending May 30th, according to the payroll.

Trial Examiner Erickson: 1941?

Mr. Nicoson: 1941.

Mr. Shapiro: 1941.

Q. (By Mr. Shapiro) Now, will you state from this record [569] when Miss Richard first came to work?

A. May 9, 1941.

Mr. Shapiro: Will you stipulate, counsel, that the record so shows?

Mr. Nicoson: I do.

(Testimony of Sam Bothman.)

Mr. Shapiro: Will you also stipulate that the same sheet of the payroll, to which we have been referring, shows Dorothy Richard under the subdivision "cutters"?

Mr. Nicoson: Yes, I so stipulate.

Q. (By Mr. Shapiro) Will you turn to the page in this book, which I believe you identified either yesterday or today, showing when Mr. Thain left?

A. The week ending January 17, 1941.

Mr. Shapiro: Will you stipulate, counsel, that the sheet of the payroll records to which the witness has just referred shows that David Thain received pay for the week ending January 17, 1941, and that thereafter there is a considerable interval of time during which he received no pay?

Mr. Nicoson: I will.

Q. (By Mr. Shapiro) Now, will you turn to the sheet in that payroll record showing when Mr. David Thain returned to work?

Mr. Shapiro: Before answering that question: Will you also stipulate, counsel, that this same sheet, to which [570] I last referred, shows Mr. David Thain as one of the employees under the subdivision "Cutters"?

Mr. Nicoson: That is right.

Mr. Ryan: We don't, however, agree that that designation on the payroll indicates that he is a cutter, or that any employee was.

Trial Examiner Erickson: I don't think the stipulation carries that with it.

(Testimony of Sam Bothman.)

Mr. Shapiro: I didn't intend it. I am only asking for a stipulation as to what the record shows.

Trial Examiner Erickson: All right.

The Witness: Let me see. You have got December 5th here, but it doesn't designate whether this week is December 5th (indicating), or this week is December 5th (indicating).

Q. (By Mr. Shapiro) Does the record show that Thain returned to your employment in the month of December, 1941? A. It does.

Mr. Shapiro: Will you so stipulate, counsel?

Mr. Nicoson: I will so stipulate.

Q. (By Mr. Shapiro) Now, can you tell me, Mr. Bothman, how it is that Mr. Thain is included as an employee under the cutters' classification on the sheet of your payroll records which carries him through the week ending January 17, 1941, and then he does not appear under the cutter classification for the period commencing March 28, 1941? [571]

A. Well, he was on a leave of absence at that time. However, it seems to me, the way this book looks, like it is set up here, she set it up quarterly in order to take care of her Social Security; so, therefore, it is carried through from this quarter, and then when she transfers her names, if he wasn't working at that time, probably she omitted it until he did return to work, for the next quarter.

You know, they set it up for Social Security. Now, I am not positive and that could be the fact, and it seems to me, looking at it, why, that could be a reason for that.

(Testimony of Sam Bothman.)

Q. Now, before Mr. Thain left for Texas, did you have a conversation with him?

A. I did.

Q. Where was that conversation?

A. At my desk.

Q. And when was it?

A. Oh, it was a couple days prior to the time he left. I think around—I will have to look at the records to be exactly sure—some time in the neighborhood, around January 17th or 15th, in that period in there.

Q. Will you state what Mr. Thain said to you, and what you said to him?

A. He came to me and told me that he was nervous and feeling badly, and he wanted to go home and be away from the factory for a while, and he would like to go home and be with [572] his folks. His mother has a ranch down in Odessa, Texas, and that he would like to go there.

And I asked him how long did he think he would be gone. And he said he didn't know for sure, because he wasn't feeling very well, he was losing weight and was nervous and he didn't know for sure how long he would be gone.

He asked me at that time if and when he would come back, if his job would be open.

I said, "Dave, naturally, your job is here for you when you come back. You are one of the oldest cutters in the place, and when you come back, why, we will give you back your job."

And he thanked me, and that was all that was

(Testimony of Sam Bothman.)

said during the conversation, that I can recall. He happens to be a brother to Miss Lettie Lee, who is president of Lettie Lee, Inc., and, naturally, we feel very friendly towards each other. And he even asked my advice as to whether or not he should go home and be out in the open for a while.

Q. Now, with reference to Miss Lembke, she has, ever since she has been in your employ, taken two or three or four months off during the summer, has she not?

Mr. Nicoson: Isn't that a little leading?

Trial Examiner Erickson: If it is, are you objecting?

Mr. Nicoson: I do.

Trial Examiner Erickson: Sustained. [573]

Q. (By Mr. Shapiro) When did Miss Lembke leave her work this year, Mr. Bothman?

A. What date?

Q. Well, the month is sufficient.

Mr. Nicoson: Are you trying to impeach him now? You have already proved by the record when she left.

Mr. Shapiro: What is that date?

Mr. Nicoson: That is the pay period ending May 30, 1941.

Mr. Shapiro: The pay period ending May 30, 1941. And, for the record, I am not attempting to impeach him.

Q. (By Mr. Shapiro) Prior to the time Miss Lembke left on May 30, 1941, did you have a conversation with her, Mr. Bothman?

(Testimony of Sam Bothman.)

A. Yes. I don't remember whether it was a week or two before she left, but she asked me if she went away for a couple or three months in the summertime, like she did the previous year, if we would hold her job open for her when she got back. And I said, "Yes."

I don't recall whether it was one, or two, or even three weeks before she left.

Q. But you did have that conversation with her before she left? A. That's right.

Mr. Shapiro: Do you have the original of the document [574] which I asked you to produce this morning, Mr. Nicoson?

Mr. Nicoson: Yes, sir, I do.

Mr. Shapiro: May I have it?

Mr. Nicoson: Let the record show that I produce a letter, addressed to Mr. D. C. Sargent, care National Labor Relations Board, Twenty-First Region, United States Post Office and Court House, Los Angeles, California, on the letterhead of Lettie Lee, Inc., bearing the signature of Sam Bothman, and two attachments.

Q. (By Mr. Shapiro) I will show you a letter on the stationery of the National Labor Relations Board, dated August 13, 1941, and addressed to Lettie Lee, Inc., attention Mr. Sam Bothman, signed, "D. C. Sargent, Field Examiner," and I will ask you if you received that on or about the date it bears?

(Handing document to witness.)

A. I did.

(Testimony of Sam Bothman.)

Mr. Shapiro: I will offer the letter in evidence as Respondent's Exhibit next in order.

Mr. Nicoson: May I see it, please?

Mr. Shapiro: Certainly.

(The document referred to was handed to counsel.)

Mr. Nicoson: Do you now offer it?

Mr. Shapiro: I now offer the letter.

Mr. Nicoson: No objection. [575]

Trial Examiner Erickson: It will be received.

(Thereupon the document referred to was marked as Respondent's Exhibit 2-A and 2-B, and was received in evidence.)

REPONDENT'S EXHIBITS No. 2-A and 2-B

NATIONAL LABOR RELATIONS BOARD

Twenty-First Region

U. S. Post Office and Courthouse

Los Angeles, California

August 13, 1941

In reply please refer to:

Lettie Lee, Inc.

Case No. XXI-C-1807

Lettie Lee, Inc.

719 South Los Angeles Street.

Los Angeles, California

Att: Mr. Sam Bothman

Gentlemen:

In confirmation of our telephone conversation of

(Testimony of Sam Bothman.)

today. I understand your position in the above-named matter to be as follows:

1. That you have approximately 100 production employees, of which 19 or 20 are out on strike.
2. That you consider your entire shop as a unit appropriate for the purpose of collective bargaining.
3. That you do not consider the cutters as a separate unit.
4. That normally you have employed in the Cutting Department approximately 8 individuals, of which 6 or 7 are now out on strike.

As you know, the Union contends that the Cutting Department is a unit appropriate for the purpose of collective bargaining, and allege that they have a majority of such workers as members in the Union, and charges your Company with an unfair labor practice; that is, refusal to bargain.

It may be necessary to conduct a formal hearing on this matter and I am enclosing a commerce questionnaire. Please furnish us with the information requested at your earliest possible convenience for the period from January 1 to July 1, 1941. If this is not practical furnish the information for the calendar year ending December 31, 1940. In addition to this information please furnish us with a current pay roll of your employees, including the names of those who are out on strike and designate those who are employed or who were employed

(Testimony of Sam Bothman.)

before they went out on strike in the Cutting Department. This pay roll will be held confidential by us and is used for the purpose of checking the Union designations.

Please let me know if I have stated your position correctly above, or if there are any changes or additions, please advise. Your cooperation is appreciated.

Very truly yours,

D. C. SARGENT

Field Examiner

DCS/dp

Enc. 1

Mr. Shapiro: Will I wait until your Honor has read it?

Trial Examiner Erickson: No, go ahead.

Q. (By Mr. Shapiro) I will show you now a letter on the stationery of Lettie Lee, Inc., dated September 11, 1941, addressed to Mr. D. C. Sargent, care National Labor Relations Board, signed, "Lettie Lee, Inc. by Sam Bothman." Is that your signature, Mr. Bothman? A. It is.

Mr. Shapiro: Let the record show that this is the instrument Mr. Nicoson has produced pursuant to my notice.

Q. (By Mr. Shapiro) Did you send this letter and its attached exhibits, being two in number, to Mr. Sargent, pursuant to his letter request?

A. I did.

(Testimony of Sam Bothman.)

Mr. Shapiro: You have seen this, of course?

Mr. Nicoson: Yes.

Mr. Shapiro: I will offer the letter and the exhibits attached as Respondent's Exhibit 3.

Mr. Nicoson: No objection.

Trial Examiner Erickson: It will be received.

(Thereupon the document referred to was marked as Respondent's Exhibit 3-A, 3-B and 3-C, and was received in evidence.) [576]

RESPONDENT'S EXHIBIT No. 3-A

LETTIE LEE, INC.

Dresses . . . Sports . . . Afternoon . . . Evening
719 South Los Angeles Street
Telephone Trinity 0571
Los Angeles

September 11, 1941

Mr. D. C. Sargent
c/o National Labor Relations Board
Twenty-First Region
United States Post Office and Court House
Los Angeles, California

Dear Sir:

Replying to your letter of August 13th, 1941, please be advised of the following facts:

Number 1. That on July 25th, 1941, we had one hundred fifteen production employees in our organization of which between nineteen and twenty went out on Strike.

Number 2. We consider our entire shop as a unit

(Testimony of Sam Bothman.)

appropriate for the purpose of Collective Bargaining.

Number 3. That we do not consider the cutters as a separate unit.

Number 4. That normally we have employed in the cutting department fifteen individuals of which six or seven are now out on strike.

As per your request you will find herewith attached a list of the fifteen employees in our Cutting Department on the above mentioned date. Also, you will herewith find attached answers to the questions on your form C.R. Line 1.

Trusting this is the information you desire, I remain,

Yours very respectfully,
LETTIE LEE, INC.
SAM BOTHMAN

SB:df

(Testimony of Sam Bothman.)

RESPONDENT'S EXHIBIT No. 3-B

LETTIE LEE, Inc.
Dresses . . . Sports . . . Afternoon . . . Evening
719 South Los Angeles Street
Telephone Trinity 0571
Los Angeles

Sept. 11, 1941

The following is a list of the facts as per your request:

Period: January 1 to December 31, 1940

1. Lettie Lee, Inc
719 S. Los Angeles St.
Los Angeles, Calif.
2. Incorporated on January 19, 1939 in the State of California.
The Officers are: Lettie Lee.....President
Mrs. R. H. Thain.....Vice-President
Sam Bothman..Secretary-Treasurer
3. Dress Manufacturing.
- 4-A Rayons, threads, buttons, buckles, and zippers.
Amount of purchases: \$151,000.00
- 4-B Out of State purchases: \$136,000.00
- 5-A \$10.75 and \$12.75 dresses
Sales: \$397,000.00
- 5-B Out of State sales: \$250,000.00
6. We concede the jurisdiction of the National Labor Relations Board.

LETTIE LEE, INC.

By -----

(Testimony of Sam Bothman.)

RESPONDENT'S EXHIBIT No. 3-C

LETTIE LEE, Inc.
Dresses . . . Sports . . . Afternoon . . . Evening
719 South Los Angeles Street
Telephone Trinity 0571
Los Angeles

Our Cutting Room consists of the following people January 1st, 1941 to July 25th, 1941.

Bundling Girls	{	Sarah Giochetti [Illegible]
		Marie Chavez
		Frances Avila
		Saloma Sesma

Louis Swartz
Vito Cimarusti✓
Angelo Castello✓
Mort Litwin✓
× Eunice Usher
Joe Sardo✓
Louis Baliber✓
Don Quinn✓
Nolan Berteaux✓
× Dorothy Richard
× Katharine Lembke

× Female Cutters?

Bundling girls sort and wrap material after the cutters are thru with it.

Trial Examiner Erickson: You understand that you must furnish duplicates of these?

Mr. Shapiro: Yes. It will be simple to make a duplicate of the letter we offered, and of which we have a carbon copy, but this other will be a little more difficult.

(Testimony of Sam Bothman.)

Can you, Miss Reporter, make a copy of this at our expense for us?

The Reporter: Yes.

Mr. Shapiro: Of both, then.

Trial Examiner Erickson: All right.

Q. (By Mr. Shapiro) Now, you received certain letters from Mr. Sokol between the time that you received the letter from the National Labor Relations Board, which has just been offered in evidence, and the date that you replied to it, did you not, Mr. Bothman? A. I did.

Q. And you testified, I believe, that you did not reply to Mr. Sokol's letters? A. Yes, sir.

Q. Will you state to the Court why you didn't reply?

A. The reason that I didn't reply to his letters was because I didn't think that he was an authorized agent for my employees or for the employees of Lettie Lee, Inc., and immediately upon the receipt of the letter from the National Labor Relations Board, I answered the letter to them stating [577] the facts as they were in our factory, and I, therefore, saw no reason whatsoever until any time that the National Relations Board designates who should act as an agent for the employees of Lettie Lee, Inc., that I should confer with, bargain with, or in any way talk to anyone else other than the one properly authorized and designated by the National Relations Board.

Q. Did you believe that in your letter of September 11th to the National Labor Relations Board, to

(Testimony of Sam Bothman.)

Mr. D. C. Sargent, that you had complied with whatever was required of you, concerning any communications relative to union representation?

Mr. Nicoson: We object to what he believed.

Trial Examiner Erickson: Sustained.

Q. (By Mr. Shapiro) Did the fact that you had received a letter from the National Labor Relations Board, and that you had replied to it in accordance with the two exhibits that have just been offered and received in evidence,—did that have anything to do with your not calling Mr. Sokol? A. Definitely.

Q. What did it have to do with it?

A. I thought that I had answered the questions—

Mr. Nicoson: I object to what he thought.

Trial Examiner Erickson: All right. Answer the question without your thoughts. [578]

The Witness: I answered the letter to Mr. Sargent, because I was under the impression that the National Labor Relations Board handled everything pertaining to labor and employees, and, therefore, an answer to them was sufficient, and if anything else was required from me, that they would notify me immediately.

Mr. Nicoson: I move to strike out his impression.

Trial Examiner Erickson: Let it stand.

Mr. Shapiro: I think it goes to the weight, rather than the admissibility.

Q. (By Mr. Shapiro) Did you receive any

(Testimony of Sam Bothman.)

other or further notifications from the National Labor Relations Board until the complaint was served on you in this case?

A. Pardon me? I didn't get that question exactly.

Q. After you wrote the letter of September 11th to Mr. Sargent, did you receive any more mail from the National Labor Relations Board?

A. It seems to me like I received either a letter or a telephone call, asking me to contact Mr. Sargent again, because I know I was up in Mr. Sargent's office, so I don't recall whether I received a letter or a telephone call in reference to that.

Q. Did you go to Mr. Sargent's office?

A. I did.

Q. And was this particular situation discussed? [579] A. It was.

Q. Did you make plain your position to him?

A. I did.

Mr. Nicoson: Will you please fix a time?

Q. (By Mr. Shapiro) When was that with respect to September 11, 1941, Mr. Bothman? September 11th is the date that you wrote to Mr. Sargent.

A. Well, let's see. I think I made two trips there. It seems to me like one of the trips was before I wrote the letter, and I am not sure whether the second one was before the letter was written or after the letter was written. I am not exactly positive of that. However, I did state my position to Mr. Sargent, and he said that the union

(Testimony of Sam Bothman.)

had stated their position, and that evidently there would have to be a hearing on this matter. So he asked me for certain information, which I gave him in the letter.

Q. Then was the next thing that you heard from anyone the complaint that was filed in this action?

A. As far as the National Relations Board is concerned?

Q. Yes.

A. Why, it was quite a long time afterwards before I got that complaint. Then Mr. Cobey, who at that time was handling this case, I think, contacted me by phone, and I went over and talked to him. I don't remember the exact dates of these conversations, however. [580]

Q. Did you ever ignore any letters or telephone communications from the National Labor Relations Board?

Mr. Nicoson: I object to that. It calls for a conclusion. Ignoring letters, I don't know what he means by that. If he wants to say—

Mr. Shapiro: I will reframe the question.

Trial Examiner Erickson: All right.

Q. (By Mr. Shapiro) Did you ever fail to reply to any letter or any telephone communication from the National Labor Relations Board?

A. No, sir, not that I know of.

Q. Mr. Bothman, how long have you been in the dress manufacturing business?

A. Oh, approximately 14 years.

Q. Were you ever in business for yourself?

(Testimony of Sam Bothman.)

A. Yes, sir.

Q. And always as a manufacturer of ladies garments?

A. Well, I have been in other business besides the manufacturing. I have been in the retail ready-to-wear business previous to going into the manufacturing of ladies garments.

Q. Now, can you state, Mr. Bothman, how many employees there were of Lettie Lee, Inc. on July 23rd, 1941? That is the day before the strike.

A. How many were working at that time?

Q. Yes. [581]

A. Oh, I would say approximately between 115 and 120, something like that.

Q. Now, does that number include all of your production employees? A. It does.

Q. Does it include your non-production employees?

A. What do you mean when you say "non-production employees"?

Q. Well, does it include salesmen, does it include office help, does it include employees other than those who work in the production of garments?

A. Well, it may. There may be six or eight non-productive employees, like office girls, and so forth, in that amount. However, I will have to consult the payroll to definitely find out for sure.

Q. Well, we won't take the time to do that now. Would you state then that on July 23, 1941

(Testimony of Sam Bothman.)

there were in excess of 110 or 115 production employees in your plant?

A. I would say roughly that that is true, yes.

Q. Will you state to the court what your production setup is in the factory? Do you understand what I mean?

A. My production setup?

Q. Yes, how your employees are classified or grouped, what each group does, and so on.

A. A general outline of the manipulations of Lettie Lee? Q. Yes. [582]

A. Well, we have a floor space in the 719 South Los Angeles building of approximately 8,000 square feet on the 12th floor, and about 3,000 square feet on the 7th floor. We manufacture High-Style ladies dresses.

Q. What do you mean by "High-Style"?

A. High fashion. In other words, not the average run of dress, but what is termed as a high fashion dress, high styled. "High-style", in other words, is a term used in the dress industry to designate the type of dress, or a type of dress.

Now, there are such things as a tailored dress, a shirtmaker dress, a fancy dress, a high-style dress, a draped dress. But Lettie Lee comes under the category of more or less a high-style item.

Q. All right.

A. Miss Lee has been designing extremely high priced dresses for a number of years. She is nationally known as a high style designer, originator of styles, and formerly her merchandise was

(Testimony of Sam Bothman.)

sold for as high as two and three hundred dollars retail per garment.

Therefore, when we decided to go into a more popular priced garment, which now sells for around \$22.75 to \$25.00, she designs along the same lines as she formerly designed while she was making the high priced things. So, therefore, the manipulations of the Lettie Lee factory are very much [583] more intricate than the average dress factory that has been spoken of previously by other men in this hearing.

Q. All right. Now, you have told us the type of garment that you manufacture, and you have given us some of the background. Will you continue and give us your production setup, what units you have, how they operate, how they are related to each other, and so on?

A. Well, we have in our factory the same type of operation, as far as units are concerned, that you will probably find in other factories.

Q. What are they?

A. Well, we will take first the designing room. We have the designing room where girls bring out the first design and make the first original pattern.

Q. Do you know how many employees you have in your designing room now?

A. Well, they vary. Sometimes from five to seven. Sometimes four to three. They vary at different times of the year. It all depends on how busy we are.

(Testimony of Sam Bothman.)

Q. All right.

A. Then from the designing room, the first operation usually goes into—after the first design is made and the pattern is made and corrected, it goes into the cutting room. Then we have what we call the cutting room, in which the first duplicates are tried out. Then after the pattern is [584] cut then the pattern is graded and then it is ready for operation for the factory.

Now, on this particular cutting room, it is on the same floor as the balance of our factory is. It is on the 12th floor. It is separated by a partition, approximately seven feet high, and within that enclosure the cutters and the bundling girls and the stock, the material from which they cut, is kept.

Q. Is that completely shut off from the rest of the plant?

A. Oh, no, it is not completely shut off. There is an opening in between one place, and then there is a counter at the end, so it isn't completely shut off. It is partitioned off.

Q. Is it correct that one end has no partition or other enclosure?

A. Other than the counter in front.

Q. I see. That is a low counter, is it?

A. Yes, it is the standard size counter, probably not as high as that table (indicating).

Q. Somewhere around three feet in height, would you say? A. Around that, yes.

Q. Now, what is there in this cutting room?

(Testimony of Sam Bothman.)

A. There are other tables, and shelves that hold the materials.

Q. And how many other tables are there? [585]

A. Let's see. I think there are three double tables, which means that six tables run practically the full length of the cutting room, from the opening of the cutting room to the window.

Q. All right. Now, is there anything else you want to tell us about this cutting room or the cutting department, before we get into the next stage?

A. Well, the cutting department consists of the cutters and the bundling girls; that is one enclosure, and they all work together, to bring out the garments from that particular room.

Q. When the cutters and the bundlers finish their operations on a garment, what is the condition of that garment?

A. Well, it is still in its very first stages, because the dress is not made up in any way, shape or form. The pieces are merely cut out. First the cutter cuts the garment.

If I may go into that in a little more complete manner, a number of years ago when the cutting industry, or when the dress industry first started out, cutting was considered one of the most important sciences in the business. But gradually as the industry became older, people began to learn more new things in reference to all parts and divisions of the industry.

(Testimony of Sam Bothman.)

There was a time when a cutter would spend hours making a marker because the cost of materials was so much more than the wages that it was important that that man should switch [586] patterns, and spend hours and hours making a marker.

But today, with the silk position out of the picture and the acetate in, the hours of time a man would lose in trying to save a quarter of a yard of material, of acetate, would be more than made up, if he would have lost the quarter of the yard and not lost the time in doing it.

So, therefore, taking all those things into consideration, we were forced in the past few years to try to figure out a way in which we could operate and still at the same time compete with the New York market, which has such a terrific volume of business and cuts in such larger scales, so that we could stay in business and compete with them at the same price.

So, therefore, we tried out a few years ago a system of carbon markings. By carbon marking, I mean we lay out one piece of paper. Then we lay carbon papers down, and we make sometimes six, sometimes five, sometimes eight, and sometimes ten markers at one time. In doing this, we eliminate the time of making a marker, if a certain lot of the same style numbers come in.

We found out that it takes just as long, if not longer, to make a marker than it does to cut out a lot of material. So, therefore, we established

(Testimony of Sam Bothman.)

this system, and by running the system it was only necessary that we hire one or two, or maybe three, real skilled employees in the cutting room, [587] because any chopper, after the marker is made, can finish and complete a lot of dresses.

Q. Now, may I interrupt you at this point, and ask you to tell the Court what you mean by the term "chopper"?

A. Anyone that has experience in cutting, and when I say "cutting"—well, by a chopper I mean a person who can either use a cutting machine, or follow the lines around the pattern and cut out the material.

Now, that term "chopper" is a term applied in the cutting departments all over the country, and it doesn't necessarily mean that the man is capable of making a marker. All it really means is that he is capable of cutting out, and chopping out the material. What it implies is really what it means.

Now, do you mind reading back just before the interruption?

Mr. Nicoson: I object to that. The witness does not need to prompt himself by the record.

Trial Examiner Erickson: You may read it.

(The portion of record referred to was read.)

The Witness: Thank you. Now, the particular operation in our cutting room, therefore, after we had inaugurated this system, was to make the markers for the complete line in carbon form. In doing this, it was not necessary that we stand at the

(Testimony of Sam Bothman.)

side of every cutter and measure up the lays, as far as yardage was concerned, because we had a master marker, who told us exactly how much each cutter would take. [588]

Therefore, in 90 to 95 per cent of the cases in the Lettie Lee factory, no one made markers except either Mort Litwin or Mr. Swartz. They were really all choppers. They may have been cutters. I am not saying that they weren't full-fledged cutters, but as far as in the Lettie Lee, Inc. factory was concerned, when a man or a woman does 95 per cent chopping and five per cent marking, I would deem them all choppers. I am not saying that they weren't cutters, but I say that in the capacity that they were employed and working at Lettie Lee is that they were all choppers.

Therefore, the girls who have been questioned on the stand, Miss Usher and Miss Lembke—

Mr. Sokol: I object to this—

The Witness: —and Miss Richard—

Mr. Sokol: Just a moment. This is going a little far, Mr. Examiner. We are supposed to proceed by question and answer.

Trial Examiner Erickson: Well, I will sustain the objection.

Mr. Shapiro: I think if anything, your Honor, the narrative form probably would save a great deal of time.

Trial Examiner Erickson: I do too, but if there is objection, I will have to sustain it.

Mr. Shapiro: Is there any legal requirement

(Testimony of Sam Bothman.)

that we have to proceed by question and answer?

[589]

Trial Examiner Erickson: No, I don't think there is any legal requirement.

Mr. Sokol: I want to be in a position to object to every word he says at the proper time.

Trial Examiner Erickson: Go ahead. I have ruled.

Mr. Shapiro: All right.

Q. (By Mr. Shapiro) Now, with respect to the three ladies and you have named, Miss Lembke, Miss Richard and Miss Usher, how do you classify the service rendered by them?

Mr. Sokol: That is objected to.

Mr. Nicoson: I object.

Trial Examiner Erickson: The question is, how do you classify?

Mr. Shapiro: Yes, your Honor. After all, he is the employer, and he knows.

Trial Examiner Erickson: Well, they have been classified on the payroll, haven't they?

The Witness: Certainly.

Trial Examiner Erickson: All right. You may answer.

The Witness: I classify them as choppers or cutters, just the same as the other employees in that particular department, because their duties were the same. When we handed them a ticket, they walked over to the rack where the markers were, and they spread out their paper, spread out their material, put the marker on it, and cut

(Testimony of Sam Bothman.)

around it. [590] If it was a large enough quantity of dresses to use the machine, they used the machine. If it was a small quantity, they used the scissors, and, therefore, they performed in exactly the same manner as anyone else does in the cutting room.

Q. (By Mr. Shapiro) Including the men?

A. Including everyone in the cutting room, with the exception of the bundlers, who had a different part, a different type of work to do other than actually cutting the dress.

However, the dress was still apart, according to the manipulation of the cutting room.

Mr. Nicoson: I object to that, and move to strike that out.

Trial Examiner Erickson: It may be stricken.

Q. (By Mr. Shapiro) Now, after the work of the cutting room or cutting department was completed, what happens to the garment then?

A. After the cutting process?

Q. Yes, where does it go?

A. You mean after the raw material has just been cut out?

Q. Yes.

A. It goes from there over to the bundling table.

Q. All right.

A. (Continuing) Which is right there, and sometimes it stays right on the table and a girl might come over to that [591] same table and

(Testimony of Sam Bothman.)

bundle it. However, in our particular factory it goes to one of the bundling tables.

Q. And there is first assorted and assembled; is that right?

A. It is there marked, which is a very important operation.

Q. Now, will you explain to the Court——

Mr. Nicoson: I move to strike that.

Mr. Shapiro: That may go out, that it is a very important operation.

Trial Examiner Erickson: It may be stricken.

Mr. Nicoson: I move to strike all of it as not being responsive. Counsel led the witness up to it, and he wouldn't even answer that way.

Trial Examiner Erickson: Read the question and answer again, please.

(The question and answer were read.)

Trial Examiner Erickson: All right. Continue from "it is there marked."

Q. (By Mr. Shapiro) All right. Tell us what you mean by "it is there marked".

A. The pieces that have been cut out by the cutters are laid down on the table, and then the assorting girl goes over to the pattern rack, gets the pattern, and if there are darts or cutting lines, she marks those lines, so that the cutting operation in some of Lettie Lee's intricate dresses would not mean a thing if those lines, those guide [592] lines, were not there to follow up in the dress.

Mr. Nicoson: I move to strike out the intricate part of Lettie Lee.

(Testimony of Sam Bothman.)

Trial Examiner Erickson: Let it stand.

Mr. Nicoson: Let them tell what they do.

Trial Examiner Erickson: Tell what they do.

The Witness: Sir?

Trial Examiner Erickson: Tell what they do.

The Witness: Well, they—

Mr. Nicoson: May I have that stricken, please?

Trial Examiner Erickson: No, I will let it stand.

Q. (By Mr. Shapiro) The query now is what do the bundlers do?

A. They mark the dresses so that the operators will know where to sew, how to sew by, because if they did not have this marking, they might sew a skirt onto a sleeve, they might forget to put the darts in, the blouses would not fit the skirts, and therefore, without these marks 80 per cent of our garments or 90 per cent of our garments, I would say, would come through the factory misfits.

Q. Is a garment, or that portion of it, after it has been cut by the cutters, is it ready to go to the operators before it has been marked by the assorters? A. No, sir.

Q. Is it possible to do that and obtain a legitimate [593] finished product?

A. Not unless the cutter would mark the dress so that the operator would know exactly how to go about it, because sometimes there is in a bundle, oh, three different kinds of material.

(Testimony of Sam Bothman.)

Q. Do your cutters mark any of the dresses that they cut, Mr. Bothman?

A. Well, our general procedure is to have the bundling girls do that.

Mr. Nicoson: I object to that as not responsive.

Trial Examiner Erickson: All right. Answer the question.

Mr. Nicoson: Answer the question "yes" or "no."

Q. (By Mr. Shapiro) Do your cutters do any of the assorting? A. No.

Q. Or the marking? A. No.

Q. All right. What is the next department or stage that the dress goes to after it is assorted or bundled?

A. It goes over to the machines, the sewing machines.

Q. Is that the same place as you have previously referred to as the operators?

A. That's right.

Q. All right. What happens to the garments there? Give us the first stage of the machine. Where does it go to first, [594] and what do they do to the garment?

A. As a general rule they are handed out to an individual operator, who sews her dress as far as she can go before it goes to the, what was termed before as the second draper, but which really is the under-draper.

(Testimony of Sam Bothman.)

Q. All right. Please explain that, Mr. Bothman.

A. The under-draper is the one who takes the dress from the operator and puts it on the form, and checks up whether the waist lines are right, and sees if the operation has been satisfactory.

Sometimes it is necessary to put a little hand draping on the dress before it can be sewn by the machine. She does all that and then sends it back to the operator again. However, if the dress does not need that type of work, she merely lines out the bottom, gets the proper length, and sends it back to the operator to put on the ribbon, so that it can go to the next stage of the operation.

Q. And what is the next stage of operation?

A. After it has gone back to the operator?

Q. Yes.

A. Well, from there it goes to the pinker.

Q. By the way, how many operators do you employ?

Mr. Sokol: When?

Q. (By Mr. Shapiro) Well, let us say on July 23rd. A. At this date? [595]

Q. July 23rd, the day before the strike.

A. Oh, I don't know the exact number. I would say—probably roughly speaking, I would say about 45, something like that; 40, 45, 50.

Q. And how many second drapers or under-drapers did you employ on the same date?

A. Oh, let's see. Probably two or three; maybe

(Testimony of Sam Bothman.)

four. I don't know exactly how many on that particular date. However we have what we call an interchangeable group of under-drappers and top drappers. They amount to probably eight people. They some of them do top draping and some do under-draping, and they interchange.

Q. Mr. Swartz used the expressions "first draper" and "second draper". You use "under-draper" and "top draper". A. Yes.

Q. But you mean the same thing?

A. It is the same operation.

Mr. Nicoson: Which is which?

The Witness: Under-draping is the draping on the garment when it first comes from the operator and the product is not finished, and top draping or last draping is on the finished product.

Mr. Nicoson: May I ask a question?

Mr. Shapiro: Yes.

Mr. Nicoson: The under-draper and the second-draper are [596] the same?

The Witness: It was termed as a second draper.

Mr. Nicoson: As Mr. Swartz used it?

The Witness: Yes, sir.

Mr. Nicoson: That is the same as the under-draper?

The Witness: Yes.

Mr. Nicoson: And what you are referring to as the top draper is the same as Mr. Swartz referred to as the first draper?

The Witness: That's correct.

Mr. Nicoson: Thank you, sir.

(Testimony of Sam Bothman.)

Q. (By Mr. Shapiro): After it comes back to the operator, it goes where?

A. It comes back from the under-draper.

Q. To the operator?

A. Then it goes to the pinker.

Q. What is the pinker?

A. The pinker is the girl that pinks the seams on the dresses. It is a minor operation. However, it goes through a machine that forms a zigzag line on the edges of the material, to keep it from raveling.

Q. How many pinking machines do you have?

A. Two. That is, I have two on the 12th floor.

Q. How many do you have on the 7th floor?

A. I think there is one on the 7th floor. [597]

Q. How many are there usually in use?

A. Well, that all depends. Now, there are certain types of garments where there is very little pinking on. They are finished seams. Then there are times when it takes two girls to keep up with the pinking, and, on the other hand, there are times when it may only take a girl half of her time to keep up with the pinking. Those girls who do that kind of work also do trimming, and put in hems, and they are interchangeable in the factor.

Q. All right. Now, after the pinking process, what happens next?

A. After the pinking process, they go to the trimmer or either they go to the hemmer, whichever is the most convenient. Usually to the hemmer first to have the hem put in.

(Testimony of Sam Bothman.)

Q. What does the hemmer do?

A. Well, it forms a hem on the bottom of the skirt, and if it is a straight line skirt we usually put a two and a half to three inch hem in, and if it is a circular skirt, it is usually a very small hem that is put in with a blind stitch.

Q. Is that done on a machine?

A. Surely.

Q. How many hemmers do you have?

A. We have one upstairs and one downstairs.

Q. Do you use one or both of the machines customarily?

A. Well, it all depends on how busy it is. If the factory [598] is busy and there is need for it, we use both of them.

Q. Now, after the hemmer, where does the garment go?

A. From the hemmer it goes to the cleaner. That is where the threads—that is the girl that takes the threads off, all the loose threads off and cuts the long threads. That is just cleaning the dress. In other words, it is what we call a cleaner, but not from the standpoint of cleaning spots, but from the standpoint of taking threads, any long hanging threads that are left from the machines, and so forth.

Q. And how many cleaners do you employ?

A. Well, there are approximately in the busy season, I would say, upstairs there are five or six girls that do that kind of work, and probably two

(Testimony of Sam Bothman.)

or three downstairs, and it varies with the amount of work there is in the factory and also varies with the type of finishing we have on a dress. In the event there is a lot of pinking, then there is also a lot of trimming. However, if the seams are finished, then there is very little pinking and then also very little cleaning.

Q. After the cleaning, where does the garment go?

A. The next operation is what we call the first finish.

Q. Will you explain that, please?

A. The first finish is the hand stitching that a garment requires before it goes to the presser.

Q. How many first finishers do you have? [599]

A. Oh, it varies also with the amount of merchandise that goes through and the amount of first finishing on a garment. On certain garments it might take five minutes to first finish. Certain garments it might take an hour to first finish. So, therefore, we have to regulate our business according—regulate the number of first finishers according to the type of dresses that are going through. So it is pretty hard to say just exactly how many we have at all times. However, it ranges in our place between one and three; sometimes one and four.

Q. Where does the dress go after that operation?

A. After the finishing?

Q. Yes. A. It goes to the presser.

Q. How many pressers are there?

(Testimony of Sam Bothman.)

A. Four. There is one stage there that we are overlooking, as long as we want to be technical about it. That is the basting of the parts of the dress, and the under pressing.

Q. Where does that stage fit in?

A. Well, for instance, if a sleeve has to be basted, or a peplum, then, as a general rule, that is under pressed before it goes back to the operator, and then the operator, in turn, sews that particular part of the garment on the full dress.

Q. All right. Now, getting back to where we were before [600] this correction, if it is a correction, what is the next step in the progress of the dress?

A. Well, the pressing. We had gotten to the pressing.

Q. Yes. Is it finished then?

A. Oh, no. First, it is pressed, and then it goes to what we call the top dresser, and she puts the garment on the form, checks it for pads or buttons or trim, or whatever there might be, and gets it ready so that the last finisher might sew on the buttons or the trim, or whatever it might be, and complete the garment.

Q. Then is the next finisher the last person who works on the dress before it is completed?

A. That is the last, with the exception of the inspector, who looks the garment over and sees that it has come through the factory according to the samples that the number on the particular dress designates.

(Testimony of Sam Bothman.)

Q. How many last finishers do you have?

A. That also depends on the amount of finishing on each garment. There are certain dresses that may have 50 buttons to sew on, may have hand piping to sew on, and that may take an hour, or an hour and a half, or two hours. Some take 30 minutes, some two minutes. So, therefore, the number of finishers, last finishers, that will work in this operation also depends on the type of the dresses that go through the factory. [601]

Q. How many examiners are there?

A. For the examiner's process in our operation we use one girl upstairs, and if we are working downstairs we use one girl down. In the last process we check it over for threads, and to see that it checks with the sample.

Q. What is the reason that you have part of your plant on the 7th floor, and the rest of your plant on the 12th floor of the same building?

A. Well, it is rather inconvenient, and still we haven't any other place on the 12th floor, so we had to take some more space on the 7th floor, in order to be able to add machines to our factory.

Trial Examiner Erickson: Do you expect to finish today, Mr. Shapiro? Do you still feel that we will be able to finish?

Mr. Shapiro: I am afraid not, your Honor.

Trial Examiner Erickson: Then we will adjourn until 9:30 tomorrow morning.

(Whereupon, at 4:30 o'clock p.m., January 28, 1942, the hearing in the above entitled matter was adjourned until Thursday, January 29, 1942, at 9:30 o'clock a.m.) [602]

[Title of Board and Cause.]

Room 808, United States Post Office and
Court House Building,
Spring, Temple and Main Streets,
Los Angeles, California,

Thursday, January 29, 1942

The above-entitled matter came on for hearing,
pursuant to adjournment, at 9:30 o'clock a. m.

[603]

Proceedings

Trial Examiner Erickson: The proceeding will
come to order.

Mr. Shapiro: Take the stand, Mr. Bothman.

SAM BOTHMAN.

resumed the stand as a witness on behalf of the Respondent, having been previously duly sworn, and testified further as follows:

Direct Examination
(Continued)

By Mr. Shapiro:

Q. Mr. Bothman, before we leave the general

(Testimony of Sam Bothman.)

subject of how to manufacture dresses, I will hand you these two large rolls, and ask you to state what they are. A. They are carbon markers.

Q. All right. Will you open up one of them, either one?

(The witness did as requested.)

Mr. Shapiro: I think that is unrolled sufficiently. Otherwise, it will become a little bulky.

I will ask that this be marked as Respondent's Exhibit next in order, if the Court please.

(Thereupon, the document referred to was marked as Respondent's Exhibit No. 4, for identification.)

Trial Examiner Erickson: You understand that all exhibits have to be furnished in duplicate.

Mr. Shapiro: I understand. Those are made in duplicate, [605] anyway, your Honor, and before the conclusion of the hearing I will have a duplicate of each of these.

Q. (By Mr. Shapiro): Now, is this a marker or a typical sample of what has been referred to as a marker by the various witnesses in this case?

A. It is.

Q. Who makes these markers?

A. These carbon markers are either made by Mr. Litwin or by Mr. Swartz.

Q. Do any of the other cutters make markers?

A. Not carbon markers, no.

Q. All right. Now, will you explain to the Court what all of these lines and figures and mark-

(Testimony of Sam Bothman.)

Trial Examiner Erickson: Yes.

Q. (By Mr. Shapiro): Now, throughout whatever pieces of trim there are, will you so mark this?

A. This entire section here (indicating) is trim.

Q. All right. I would suggest that you do it this way, put a pencil mark around this area and mark it "trim."

The Witness: You see, this is taffeta. Does this say "taffeta"? Let me see this front. "Flat crepe," this is flat crepe. [608]

Q. (By Mr. Shapiro): All right. Just mark it "trim" wherever the trim shows on the marker.

A. All right. This entire section (indicating) is trim.

Q. All right. Mark it.

A. Would you mind opening the marker a little farther, so that I can see it?

Q. You had better start rolling your end there or else we are going to have this all over the courtroom.

A. Now, unroll a little farther, so that I can see what the body of it is. This is trim (marking).

Q. All right. Where you are writing "trim," that portion within the confines of the particular lines is trim; is that correct?

A. That's right. Now, that (indicating) is probably the balance of the material.

Q. That is all the trim on the dress?

A. That's right.

Q. The rest is part of the—

A. That is the solid part of one cloth, one roll.

(Testimony of Sam Bothman.)

Q. I see. Do you want this unrolled any farther?

A. I don't think it is necessary, because the balance of it—well, the trim is up on this end.

Q. When this marker goes to one of the cutters, does he cut out all of this, including the trim?

A. Sometimes he does, and sometimes he don't.

[609]

Q. How is that determined?

A. Sometimes, in order to speed up production, we let them cut the body and turn the rest of the balance of the marker over to a girl, who cuts the balance of this marker out.

Q. All right. Now, does the cutter have to do anything with this marker, except to go through the process that you have explained, that is, to lay it on the table, put the cloth down and cut around the lines?

A. Well, other than the fact that he may go to the pattern rack and get the pattern, and check the marker.

Q. For what purpose?

A. Just to see there was no mistake. However, that is not usually done after a marker is made once or twice. Then it is a complete process, and it is finished.

Q. Then the cutter follows the marker and cuts it out according to the lines shown?

A. The entire workings of the operation, once they have this marker there, is to take the paper, lay the material down and follow these lines im-

(Testimony of Sam Bothman.)

plicitly. If these lines are not followed, then the garment will not come out right. In other words, all the cutter does is to cut around these lines, whether it be a stack of nine dresses, fifteen dresses, or one dress. He just follows these lines, exactly as they are drawn on this piece of paper. [610]

Q. And has nothing else to do, in so far as the cutting is concerned?

A. Nothing whatsoever.

Mr. Shapiro: I will offer at this time as Respondent's Exhibit 4, the marker that the witness has testified about, your Honor.

Mr. Nicoson: I object to the entry of this as immaterial, irrelevant and serves only as surplusage in the record. It doesn't add anything or detract from anything in this case.

Mr. Sokol: May I ask the witness a question?

Trial Examiner Erickson: Yes.

Mr. Sekol: Who made this particular document?

The Witness: Either Mr. Swartz or Mr. Litwin.

Mr. Sokol: You don't know, do you, exactly who made it?

The Witness: I know that one of them made it.

Mr. Sokol: Either one or the other. You don't know who made it?

The Witness: Either one or the other, I know made it, because there is no one else that makes markers in our place.

Mr. Sokol: Will you please answer the question? Do you know, of your own knowledge, who made that marker.

(Testimony of Sam Bothman.)

Mr. Shapiro: He has already answered the question. He has stated it was made by either one of them. [611]

Mr. Sokol: I want to know exactly if he knows who made it.

Trial Examiner Erickson: The objection will be overruled. It will be received.

(Thereupon, the document heretofore marked for identification as Respondent's Exhibit No. 4, was received in evidence.)

Trial Examiner Erickson: Of course, the duplicate must be furnished.

Mr. Shapiro: We will furnish it, your Honor.

Trial Examiner Erickson: Yes.

Mr. Shapiro: Thank you.

Mr. Sokol: I submit that it wasn't made under his supervision, your Honor. I am objecting on the ground of foundation. He can't testify to something he doesn't know about.

Trial Examiner Erickson: My ruling will apply to your objection, as well as the objection made by Mr. Nicoson.

Q. (By Mr. Shapiro) I have here another roll of white paper, with blue lines on it.

It might facilitate the discussion of these two markers to state that the first one, the one that is now in evidence as Respondent's Exhibit 4, has all red lines. This has all blue lines. [612]

What is this, Mr. Bothman?

A. This is also a carbon marker.

(Testimony of Sam Bothman.)

Q. And by whom was this marker made?

A. This marker was made either by Mr. Litwin or Mr. Swartz.

Q. What is this a marker of?

A. This is a marker, a replica of a particular one of the dresses in our particular line.

Q. Now, does this particular marker contain any sloping on it?

A. This particular marker does not contain any sloping. However, this entire portion of this dress has to be remarked and resloped after the material is cut off to be sent out to be pleated. That is the greatest portion of this marker.

Q. Will you explain that to the Court? What parts of the marker have to be cut out to be sent out to be pleated, and mark it with the pencil.

A. Well, I think we had better unroll more of this marker.

Q. All right. You had better start rolling your end, or else we are going to have a tangle.

A. You see, it is marked "tear out." It is already marked. You see, I don't have to mark this. It is marked "tear out." [613]

Q. Then each place where it is marked "tear out"— A. That's right.

Q. —that is torn out by the cutters; is that correct? A. That's right.

Q. The material is torn out?

A. That's right.

Q. And what happens to the material?

(Testimony of Sam Bothman.)

A. It goes out, either to be tucked or to be pleated, whatever it might be, in the process of this dress.

Q. Then after that portion of the material is torn out and pleated, after it comes back to the factory, where does it go?

A. It goes to the—let's see—after it comes back to the factory it has to be sloped. In other words, we call it slope; in this particular dress, you would call it recut, because a terrific portion of this dress has to go out of the house.

Q. All right.

A. You have here—so far we have unwrapped practically half this marker, and if you will notice where it is marked "tear out," that all has to go out.

Q. Now, will you unroll the rest of the marker, and will you then state what part of it includes material that has to be torn out, for the purpose of having it pleated, and what portion of it has to be cut by the original cutter? [614]

A. Well, let's see. Let's go farther back.

(Unrolling marker.)

Starting right here (indicating), you see.

Q. All right. Mark that.

A. In this panel.

In other words—let me see—this panel, this part here, this portion (indicating), I would roughly say there is about 2 yards of that garment—what is it on the end of it, Mr. Bothman? I can't see this.

Trial Examiner Erickson: This is your case,

(Testimony of Sam Bothman.)

now, Mr. Shapiro, and, of course, I can see what is going on—

Mr. Shapiro: Well, I am going to do my best.

Trial Examiner Erickson: —but it may be reviewed by someone else, and "this" and "that" means nothing in the record.

Mr. Shapiro: I am going to ask him every point where he makes such a reference.

The Witness: That is a trim, at that end, only that is a different type of trim, because this is made out of the material and sent out to be pleated, and that (indicating)—

Q. (By Mr. Shapiro) Will you mark the part on the marker where the part to be sloped stops, and where the cutting to be done by the cutter begins?

A. Well, this part is to be sloped (indicating). [615]

Q. Is this (indicating) the part to be sloped?

A. It starts right here (indicating) and this section here (indicating) doesn't get sloped, but this section right here (indicating) does.

Q. Mark each part that is to be sloped.

(The witness did as requested.)

Q. All right. I will roll it back now, so that we will have it in order.

A. Mr. Shapiro, where that line is there (indicating), that part is the trim.

Q. All right. Let's mark that.

A. Starting in there (indicating), that is the trim.

(Testimony of Sam Bothman.)

Q. All right. Roll it up to that point, and mark it as "trim." A. All right.

(The witness did as requested.)

Mr. Shapiro: Sorry, your Honor, but this is so awkward.

Trial Examiner Erickson: It is not a bit awkward, if you will let the record know what you are talking about.

Mr. Shapiro: I will do my very best.

Q. (By Mr. Shapiro) Now, you have written "trim" in the last rectangular space on this marker; is that correct? A. Correct.

Q. All right. Now, let's roll it back the other way, [616] and mark every part of it that has to be sloped. You have only marked one so far. Let's not roll it out so long this time, and I think it will be easier.

A. I have got that one marked (indicating).

Q. Now, as you come to any others that are to be sloped, please write it in.

A. It is understood that where I mark "sloped," it takes in the entire blue——

Q. The entire enclosure?

A. Enclosure.

(The witness marked the exhibit.)

Q. Is that all of it? A. Yes, sir.

Q. Now, you have written the words "to be sloped" in every portion of this marker where there is written in blue pencil "tear out."

A. Correct.

(Testimony of Sam Bothman.)

Q. Is that correct? A. Correct.

Q. Those parts are torn out and sent out to be pleated, and then when returned to the factory are sloped— A. Correct.

Q. What is done with the other portions of this marker not indicated as to be sloped?

A. That is laid on the material, and the material cut out [617] laid aside until the parts that were torn off are pleated and sloped. Then they are all assembled by the bundling girl.

Q. Now, what does the cutter have to do with this marker, when he gets it?

A. On this particular type of a marker?

Q. On this particular type of a marker.

A. He takes the material, tears off the pieces that go out to be sloped, and lays the marker down on the material for the balance of the dress. The balance of the dress in this particular case would take about two yards and a quarter, it looks like, just roughly guessing, and the sloping would take about the same amount. And when the marker had marked in the trim, which was about a yard, so if he was working with somebody who cuts the trims, why, he cuts off that part of the marker that is marked "trim", and gives that to the girl or whoever else would be cutting the trim part.

Q. It would not necessarily be a girl, would it?

A. Not necessarily, but, however, when they work with the girl, the girl and the cutter work together, to make it speedy, if she is to cut the trim, he would cut off that part of the marker and hand

(Testimony of Sam Bothman.)

it to her, and he would cut the body, and she would cut the trim.

Q. (By Trial Examiner Erickson) Let me ask you a question. [618] You said he would tear out the part to be sloped? A. That's right.

Q. What does he do with it?

A. He takes it over to the bundling girl and she sends it out to be pleated, or tucked, whatever it may be.

Q. Without cutting it? A. That's right.

Q. Who cuts it?

A. When it comes back from the pleater, the girl who does the sloping cuts it.

Q. From the tear-off on this particular exhibit?

A. That's right.

Q. (By Mr. Shapiro) And does she use the marker? A. Sure. She uses a pattern.

Q. This same pattern?

A. No, she has to go and get the pattern.

Q. The original pattern?

A. The original pattern.

Q. (By Trial Examiner Erickson) Just a minute. I asked you if she used the tear-off. Now, you say you tear off the particular parts to be pleated?

A. The material, yes.

Q. What do you mean? You tear off the paper that you have in that exhibit, or you tear off the cloth?

A. The cloth, the amount of cloth, the exact same size [619] as this piece of paper.

Q. So the cutter—

A. Tears that off.

(Testimony of Sam Bothman.)

Q. —tears that from the cloth and not from the paper.

A. As a general rule, it comes out together and he takes this piece of paper and throws it away.

Q. I want you to be clear on that. Is it the cloth or the paper that is torn out, that is shown on that exhibit? A. The cloth is torn off.

Q. (By Mr. Shapiro) Then after it is pleated, it goes to whoever does the sloping and is then cut by that person; is that right?

A. That's right.

Q. And in so cutting it she follows the original pattern; is that right? A. That's right.

Trial Examiner Erickson: Is that the same pattern you are showing us now, or is that another pattern?

Q. (By Mr. Shapiro) Will you explain that, Mr. Bothman?

A. The pattern that we have here, that the cutter tears out the material which has to go out and be pleated. So, therefore, she has a pattern of that dress that is laid down on the material after it is pleated. In other words, this is sent out and it comes back half the size that it is when it went out. [620]

Trial Examiner Erickson: That is exactly what I have been worried about for quite a long time during this hearing. When she gets back the pleated material, she then has a design that is the particular piece that she is supposed to slope, and not a design such as you have in that exhibit.

(Testimony of Sam Bothman.)

The Witness: No. This piece of—you mean, the sloper, when she gets it back?

Trial Examiner Erickson: That is right.

The Witness: She has a pattern of the material after—

Trial Examiner Erickson: Of the particular piece of cloth that she is supposed to slope?

The Witness: That's right.

Trial Examiner Erickson: That is right. So what she gets is a piece of paper that is one of the portions of the exhibit that you now have in your hand, that you have marked for sloping; is that right?

The Witness: No. This particular process that we have here is not the pattern that she used to slope on.

Trial Examiner Erickson: I understand that. I know that. You have now a complete dress in design on paper.

The Witness: That's right. That is up to a point.

Trial Examiner Erickson: And you hand that to a cutter, don't you?

The Witness: That is right. [621]

Trial Examiner Erickson: That cutter does certain operations—

The Witness: Correct.

Trial Examiner Erickson: —from that design, which we will say is an entire building?

The Witness: Yes.

Trial Examiner Erickson: There are certain por-

(Testimony of Sam Bothman.)

tions of that design that require a trim other than the original raw material, such as what we call pleating, or you have called pleating here?

The Witness: Yes, sir.

Trial Examiner Erickson: The cutter takes that—we will call it a building—and he does certain operations upon that building, or that design.

The Witness: That's right.

Trial Examiner Erickson: In his operations he sees that certain materials that you have marked on there as going out for pleating, or whatever operations are required outside of your own plant, should be sent out. He either cuts a block, or whatever operation he has to do, and marks that, and it is sent out for that particular operation; is that right?

The Witness: That's right.

Trial Examiner Erickson: It comes back—

The Witness: It comes back to the cutting room. [622]

Trial Examiner Erickson: It comes back to the cutting room?

The Witness: That's right.

Trial Examiner Erickson: And somebody like Eunice—

The Witness: Yes.

Trial Examiner Erickson: —takes that material after it has been pleated, and after it has been cut out by the cutter, and she then has a different piece of paper than the one you have here before you on the witness stand, which is a design

(Testimony of Sam Bothman.)

that she is supposed to follow to cut out from that material; is that right?

The Witness: That's right.

Trial Examiner Erickson: All right. Proceed.

The Witness: That's correct, sure.

Mr. Shapiro: We will offer this marker as Respondent's Exhibit No. 5.

Mr. Sokol: The same objection.

Trial Examiner Erickson: The objection is overruled. It will be received.

(Thereupon, the document referred to was marked Respondent's Exhibit No. 5, and received in evidence.)

Q. (By Mr. Shapiro) Mr. Bothman, it has been stipulated in this case that Joe Sardo has been convicted of a felony.

Mr. Nicoson: It has not been stipulated.

Mr. Sokol: I never heard it. [623]

Mr. Nicoson: There is no such stipulation in the record.

Trial Examiner Erickson: It has been admitted, then.

Mr. Nicoson: It has been testified to.

Mr. Sokol: Oh, he testified to it?

Mr. Nicoson: Yes.

Trial Examiner Erickson: All right. Proceed.

Mr. Nicoson: He testified, but no stipulation.

Mr. Shapiro: I will strike that question, then.

Q. (By Mr. Shapiro) Joe Sardo, one of the complainants in this case, has admitted from the witness

(Testimony of Sam Bothman.)

stand that he was convicted of a felony, to-wit, the crime of grand larceny.

Trial Examiner Erickson: Well, in a Michigan court?

Mr. Shapiro: Yes. I just want to get it correct.

Mr. Nicoson: Wisconsin.

Mr. Shapiro: In Wisconsin.

Trial Examiner Erickson: Or Wisconsin.

Mr. Shapiro: In the State of Wisconsin.

Trial Examiner Erickson: Grand larceny.

Mr. Sokol: Maybe the man is entirely wrong. May I have a few minutes, your Honor, for the reason that a man may be convicted of a felony, but if he is sentenced to a term less than a state's imprisonment term, it is not a felony. [624]

Trial Examiner Erickson: What has it to do with this case?

Mr. Sokol: I don't think it has anything to do with it.

Mr. Shapiro: It has a great deal to do with it.

Trial Examiner Erickson: In what respect?

Mr. Shapiro: In the first place, and least important of all, it is impeachment of the witness, Sardo. In the second place, it bears directly on the question of the necessity that the employer reinstate Mr. Sardo. I am prepared to cite authorities in the Circuit Court that where an employee has been convicted of a felony, or for that matter any serious grade of misdemeanor, that he need not be reemployed or reinstated by the employer.

(Testimony of Sam Bothman.)

Mr. Nicoson: I would like to have those citations.

Mr. Shapiro: I will be happy to give them to you.

Trial Examiner Erickson: I would like to have them too. Proceed.

Mr. Shapiro: Do you want them now?

Trial Examiner Erickson: Proceed. Whenever you want to give them, in your brief, or your argument.

Mr. Sokol: I think they should await argument, so that we can cite counter authorities at that time.

Mr. Shapiro: I am not making that up. That is what the cases hold. I have a number of them. [625]

Mr. Sokol: There is no objection before the court.

Trial Examiner Erickson: No, there isn't. Proceed.

Mr. Shapiro: That is the purpose of the offer.

Now, I was interrupted. I will go back again.

Q. (By Mr. Shapiro) The witness, Joe Sardo, has admitted on the stand that he was convicted of the crime of grand larceny,—

Mr. Nicoson: I object to statements in the record.

Trial Examiner Erickson: No, that is in the record.

Mr. Nicoson: Well, he is making another statement. He has a witness on the stand. Is he questioning the witness or making a statement.

(Testimony of Sam Bothman.)

Trial Examiner Erickson: The objection is overruled.

Q. (By Mr. Shapiro) (Continuing) —in the State of Wisconsin, in the year 1936, and that he served a term, I believe, of 15 months. I believe in the State Penitentiary for that crime for which he was convicted. I will ask you, Mr. Bothman, when did you first learn that Mr. Sardo had been convicted of a felony?

A. Oh, it was a few days after the strike. I don't know the exact date. A few days after the strike I heard that he was.

Q. Was that the first knowledge that you had that Mr. Sardo had been convicted of a felony?

A. It was. [626]

Q. How did you get that information?

A. I heard one of the officers make that statement.

Mr. Nicoson: I object to that, unless he states the name of the man from whom he heard it.

Trial Examiner Erickson: Objection sustained.

Mr. Nicoson: I move to strike it out.

Trial Examiner Erickson: It may be stricken.

Mr. Shapiro: It may go out.

At this time let the record show that I am handing counsel a certified record of the transcript of the proceedings involving the indictment and conviction of Joseph Sardo of the crime of grand larceny, in the State of Wisconsin, to-wit, the stealing of 20 suits of clothes of a total value of \$400, being the property of Sullivan Bros., a partnership.

(Testimony of Sam Bothman.)

Trial Examiner Erickson: Is there anything in the papers other than the admission made by the witness himself, that would serve a useful purpose in this hearing?

Mr. Shapiro: I think so. It is a transcript, which I have just received.

Trial Examiner Erickson: I know, but the witness admitted the accusation that you are making, and I can't see any reason for—

Mr. Shapiro: I think it completes the record. That is the only importance of it, your Honor. [627]

Trial Examiner Erickson: I can't see it. If you will point out to me what those are, those papers, I see there are six or seven sheets there, that will help this record, other than the admission of the witness himself, I will be glad to consider the admission of the document.

Mr. Shapiro: Well, it is cumulative, your Honor.

Trial Examiner Erickson: All right. Then we will not have it entered in the record.

Mr. Shapiro: All right.

Mr. Nicoson: Then I move to strike his statements concerning this document.

Trial Examiner Erickson: No. They will stand on the record as a part of the reason for not allowing its admission.

Mr. Sokol: Well, it wasn't offered.

Mr. Shapiro: Yes, I did offer it.

Trial Examiner Erickson: Yes, he offered it.

Mr. Shapiro: And I understand it was refused

(Testimony of Sam Bothman.)

for the reason the facts have been admitted by the man.

Trial Examiner Erickson: That is right, and because you said it was cumulative.

Mr. Shapiro: That is correct.

Trial Examiner Erickson: That is right.

Q. (By Mr. Shapiro) Did you ever ask Mr. Sardo to return to work? [628] A. No, sir.

Q. Why not?

A. I didn't think it was a good policy to have anyone come back to work that had been convicted of stealing clothes in our factory.

Trial Examiner Erickson: In your factory?

Mr. Nicoson: In your factory?

The Witness: I said, to come back in our factory; to come back to work in our factory is what I meant to say, if I misstated that.

Trial Examiner Erickson: Yes, I know, but the way you said it made a difference.

Mr. Shapiro: The construction was bad.

Trial Examiner Erickson: Yes, that is right.

Q. (By Mr. Shapiro) I will direct your attention to June 11, 1941, the date of the first meeting of the cutters with you in the cutting room.

Mr. Shapiro: I don't want to be repetitious, and, apparently, your Honor, I can't recall precisely whether I went into some of these matters, so if I did, if you will stop me, I won't repeat them.

Trial Examiner Erickson: I have a very good memory.

(Testimony of Sam Bothman.)

Mr. Shapiro: I know, and I don't want to go over the same matters twice. We are all anxious to finish.

Mr. Nicoson: We will help you. [629]

Mr. Shapiro: I am sure.

Q. (By Mr. Shapiro) (Continuing) How did you happen to attend that meeting, Mr. Bothman?

A. I was told by Mr. Swartz that the boys were asking for a raise, and that they wanted to talk to me. So I told him to have the boys wait after work, and I would come back and talk to them.

Q. And did you? A. I did.

Q. And who was present at that meeting?

A. Let's see. Mr. Litwin, Mr. Swartz and Mr. Sardo—I don't remember the boys' last names so well—Quinn, and Vito, and Berteaux, Louis, and—

Q. Well, all of the six men who are complainants in this matter? A. That's right.

Q. Who went out on strike?

A. That's right.

Q. Was there a conversation at that time, at that first meeting?

A. Oh, yes, surely. They told me they felt like they wanted a raise. And I asked them if they would rather have a raise of straight pay, or when we get busy, whether they would rather work overtime rather than take on another person, and I gave them their alternative, to decide which [630] they would rather have.

Q. All right. What else did you say?

(Testimony of Sam Bothman.)

A. That's practically all that was said at that particular discussion. I don't think it lasted more than four or five minutes.

Q. Did you ask them to make a decision then or at a later time?

A. I told them to talk it over among themselves and decide.

Mr. Shapiro: Just a minute. I don't want that passed around, if you don't mind, unless you want it to go into the record. After all, it is my property.

Mr. Sokol: Calm yourself. I thought you wouldn't mind.

(The document was returned to Mr. Shapiro.)

Q. (By Mr. Shapiro) Did you at that time state, "Which of you fellows are going to join the union?" Answer that question. A. I did not.

Q. Did you at that time state, "The Union won't do anything for you. It is just a racket. All they want is your dues." A. I did not.

Q. Did you at that time tell them anything about your brother, and the troubles that he had had operating as a union ship? A. I did not. [631]

Mr. Nicoson: I object to that. That is entirely leading. If he wants to ask him about the specific things, he can do that, but he certainly should not prompt the witness. I move to strike the answer.

Trial Examiner Erickson: The objection is overruled. Proceed.

The Witness: I did not.

(Testimony of Sam Bothman.)

Q. (By Mr. Shapiro) Did you state at that time that you would never sign a union contract?

A. I did not.

Q. Did you state at that time—and the court and the stenographer will excuse the use of this language—that all union men were sons-of-bitches and stinkers? A. I did not.

Q. Did you at that time state that you would close up the plant before you would sign up with the union? A. I did not.

Q. Did you state at that time that if the men joined the union that they would get less work than they were getting at that time? A. I did not.

Q. Did you state at that time that the union members and officials were a bunch of shysters, and just out to help themselves?

A. I did not. [632]

Q. Did you state at that time that you understood that there was going to be a strike and that you wanted to know how they stood?

A. I did not.

Q. Thereafter, was there another meeting of the cutters which you attended? A. There was.

Q. When was that, with respect to the first meeting?

A. Oh, I don't recall exactly, three, or four, or five days later; maybe it was just three days later.

Q. And was the same group there?

A. It was.

Q. Will you tell the court what conversation, if

(Testimony of Sam Bothman.)

any, took place at that time, what you said and state what anybody else said?

A. Why, I went back about a little after 4:30, and someone or other of the boys, I don't remember who it was, told me that they had decided, that they had made up their minds and they had decided to take whether the raise or overtime.

So I went back, and I said, "I understand you boys have made up your minds."

They said, "Yes, we will take the raise."

I said, "O. K. You can have your raise." And I don't recall which one said it, however, it seems to me [633] like one of the boys said, "Gee that's swell," and they seemed very well pleased, and very happy to think that they didn't have to battle for the raise.

Mr. Nicoson: I object to what they seemed, and move to strike it out.

Trial Examiner Erickson: I will let it stand.

The Witness: And then I asked the boys, I says—I told the boys, "Now, that I have given you the raise, why, after all, you know that we haven't—our business hasn't increased to a great extent, so I would appreciate it very much if you move your fingers a little bit faster and make up for the difference."

Q. (By Mr. Shapiro) What did the boys say?

A. They said they would gladly do that.

Q. Was there any other conversation?

A. No, I don't recall very much, hardly anything else that was said, with the exception of when

(Testimony of Sam Bothman.)

we started to leave, I turned around and asked the boys, "How do you feel about the Union?"

Q. And was that after you had closed the discussion and granted the raise?

Mr. Nicoson: I object to that as slightly leading.

Trial Examiner Erickson: I will let him answer it.

The Witness: We were three-fourths of the way out of the cutting room already when I asked that question. [634]

Q. (By Mr. Shapiro) And what did they say?

A. They said that—let's see—I don't recall exactly what they all said. I asked them the question, and it seems to me like they said, "No, they didn't have anything to do with the union." I am not positive about that, however.

Mr. Nicoson: I object to what it seemed, and move that it be stricken.

Trial Examiner Erickson: Let it be stricken.

Q. (By Mr. Shapiro) You don't recall what their answer was?

A. No, I can't recall exactly what they said.

Q. Now, either on June 11th or June 13th, the date of this last meeting that you have just testified about, had any of the boys told you that they belonged to a union, or that they wanted to join a union? A. No.

Q. Had the question of union membership or affiliation ever been discussed or mentioned between you?

(Testimony of Sam Bothman.)

Mr. Nicoson: By "the boys," I suppose you mean the six men?

Mr. Shapiro: The six men.

The Witness: Not that I recall. Nothing definite that I can recall, no.

Q. (By Mr. Shapiro) All right. Now, calling your attention [635] to the 24th day of July, 1941, that was the day that the strike commenced wasn't it? A. It was.

Q. When and how did you first learn that a strike was in progress?

A. I came down to the factory about a quarter to nine that morning. I was a little late. And when I reached the corner of Seventh and Los Angeles Street, I saw a great crowd of people around, and I saw a few of our workers on one corner, and a few of them on another corner. And I said to Miss Lee, who was in the car with me, "There must be some trouble, because I see our people standing around here. Some of them are not going up to work." That was the first that I knew of the strike.

Q. Did you go into the restaurant that morning where the boys usually ate and met—I don't remember the name of that restaurant.

Mr. Nicoson: The Exchange.

Q. (By Mr. Shapiro) —the Exchange restaurant?

A. Yes, I did. I went into the restaurant that morning.

Q. Did you see any of the cutters there?

A. Yes, I saw some of the boys there. I don't

(Testimony of Sam Bothman.)

recall exactly which ones I saw, but some of the boys I saw there that day.

Q. Did you have any conversation with them?

[636]

A. Very little. I talked to one or two of them for just a very short time.

Q. What did you say?

A. I said that, "I am surprised that you boys don't go up to work. Why didn't you go back to work?"

Q. Anything else?

A. And I think, it seems to me like I asked them to come back to work. That is as much as I remember that morning.

Q. Did you tell them they could come back to work, if they wanted to? A. Yes.

Q. Was there anything said about the number of your employees that had gone out on strike?

Mr. Sokol: That is leading. I object to that.

The Witness: At that particular time—

Mr. Sokol: Just a minute. I object to that. It is leading.

Trial Examiner Erickson: He may answer.

The Witness: At that particular time?

Q. (By Mr. Shapiro) At that time?

A. I might have said that "you are—the cutters are practically the only ones that are out. Why don't you come back to work?" I don't recall exactly. The reason is that it was a quick conversation. The reason I went over to the restaurant, in the first place, is because two or three girls [637]

(Testimony of Sam Bothman.)

had called on the telephone that they were being held in the restaurant by some of the officials of the union, and they asked me——

Trial Examiner Erickson: Let's have an answer to the question, please. Let's strike all that.

Mr. Nicoson: Yes, I object to that and move to strike it.

Mr. Shapiro: Don't volunteer.

Trial Examiner Erickson: Just read the last question, and you remember to answer that question.

(The question referred to was read as follows:

"Q. Was there anything said about the number of your employees that had gone out on strike?"

The Witness: There might have been.

Q. (By Mr. Shapiro) Well, what is your best recollection? Was there, or wasn't there?

A. Well, I have a faint recollection of saying that "You boys are a very small group out of the entire Lettie Lee plant, that went out, so, therefore, I wish you would come back to work."

It seems to me like I said that. However, I won't be sure about that, because that morning everybody was a little excited, and I don't recall the exact conversation.

Q. All right. Now, in the month of September, did you have a conversation with Vito Cimarusti in the picket line, or near [638] the picket line?

A. In December?

(Testimony of Sam Bothman.)

Q. In September. A. In September?

Q. Yes. A. Yes.

Q. All right. Who else was there besides Vito?

A. Well, Vito—in September, was that?

Q. Yes.

A. One morning in September I talked to Vito and Berteaux.

Q. You mean Berteaux?

A. Berteaux, I think it is, and Quinn, yes.

Q. What did you say to them?

A. I asked them to come back to work.

Q. What did they say?

A. Well, they said maybe they would, to the best of my recollection.

Q. Did you at that time say that you would have nothing to do with those stinkers and s-b's, let's put it that way?

Trial Examiner Erickson: No, say "sons of bitches." That's all right.

Mr. Shapiro: Don't think, your Honor, that I am timid.

Trial Examiner Erickson: No, that's all right. Let the record show. I once had a hearing where a man was thrown out on his ass, and I said he was thrown out on his [639] posterior, and I was criticized for it.

Mr. Shapiro: All right, your Honor. If it is all right with the Board, it is all right with us.

Q. (By Mr. Shapiro) Did you say at that time that you would have nothing to do with those stinkers and those sons of bitches?

(Testimony of Sam Bothman.)

A. I don't recall saying that, no.

Q. Did you say anything to them at that time with reference to Mr. Sardo?

A. I don't recall whether Mr. Sardo's name was brought up at that time.

Q. In talking to any of the boys, and when I say "boys", I mean those cutters who went out, did you at any time mention Sardo and whether you would or would not take him back?

Mr. Sokol: May we have the time and place, and parties present?

Mr. Nicoson: Yes, I think so. I will object.

Trial Examiner Erickson: Are you referring now to a recitation of the testimony that was given directly in this case?

Mr. Shapiro: Yes. I have reference to the testimony of Mr. Quinn, I believe.

Trial Examiner Erickson: So the time is the same?

Mr. Shapiro: The same time. [640]

Trial Examiner Erickson: As given by Mr. Quinn?

Mr. Shapiro: The same time.

Trial Examiner Erickson: All right. You may proceed.

Mr. Nicoson: You are talking about this time in September now?

Mr. Shapiro: Yes.

Mr. Nicoson: All right.

The Witness: I might have said that I didn't want to have Sardo back due to the fact that I had

(Testimony of Sam Bothman.)

learned since the strike that he had been convicted of a felony, and I didn't think we should have him back. I might have said that at that particular time. I am not sure.

Trial Examiner Erickson: What is the date on the transcript that you have there on this man's conviction?

Mr. Sokol: 1936, you mean?

Trial Examiner Erickson: No, I mean the date of the covering letter?

Mr. Shapiro: The letter of transmittal?

Trial Examiner Erickson: Yes.

Mr. Shapiro: January 26, 1942. I just received this from the east.

Trial Examiner Erickson: All right. Go ahead.

Q. (By Mr. Shapiro) Did you have any other discussions, either in September, or thereafter, with any of the boys while they were on the picket line or around the building? [641]

A. Yes. I think I can't give you the exact dates, but I asked the boys on the picket line to come back two or three times, to come to work.

Mr. Nicoson: Excuse me. May I have the question and answer, please?

(The question and answer were read.)

Mr. Nicoson: I move to strike the answer for the purpose of interposing an objection, and my objection is that he should say to whom he referred by "the boys."

Trial Examiner Erickson: It will be sustained.

(Testimony of Sam Bothman.)

Q. (By Mr. Shapiro) What boys did you ask to come back to work?

A. Don, and Vito, and Berteaux.

Q. Well, you mean Don Quinn, Vito Cimarusti, and Nolan Berteaux? A. That's right.

Q. Is that right? A. That's right.

Q. Why didn't you ask the others to come back to work?

Mr. Sokol: That is objected to as calling for the conclusion of the witness.

Trial Examiner Erickson: He may answer.

Mr. Shapiro: It is not a conclusion on his part.

Trial Examiner Erickson: No. He may answer.

The Witness: As I stated before, the reason that I [642] didn't want Sardo back was——

Q. (By Mr. Shapiro) Yes, you did.

A. Shall I repeat that?

Q. It isn't necessary. It is in the record. How about the other two?

A. Well, we didn't have a sufficient amount of business to require the full force at that particular time.

Trial Examiner Erickson: What is this date now?

Q. (By Mr. Shapiro) When is this?

Mr. Nicoson: The record shows this to be September 27th, or about that time.

Trial Examiner Erickson: And what is the payroll record on the overtime? When did that overtime stop?

(Testimony of Sam Bothman.)

Mr. Nicoson: That I am not sure. It runs through the entire period of September.

Trial Examiner Erickson: It does. All right.

Mr. Nicoson: In September, I am now noting in the record.

Trial Examiner Erickson: I am not sure that that particular part of the payroll is in the record, and that is the reason I asked. I know you have Exhibits 15-A, B, C and D, but that sheet——

Mr. Nicoson: Board's Exhibit 15-D covers the period of September 19th, and September 26th, which is the last two pay periods in September, 1941.

Trial Examiner Erickson: And that shows the overtime? [643]

Mr. Nicoson: Yes, it does.

Mr. Shapiro: Where does it? I don't recall it. Well, whatever the record shows.

Trial Examiner Erickson: The only reason I brought it up was I wasn't sure whether the particular exhibit 15 covered it.

Mr. Nicoson: 64½ hours on September 26th, and on September 19th he had 68 hours. The witness has already testified to that.

Mr. Shapiro: That is Mr. Litwin you referred to?

Mr. Nicoson: Litwin, correct.

Mr. Shapiro: And none of the others?

Mr. Nicoson: I didn't cover about any others. The record will show.

Mr. Sokol: The record will show.

(Testimony of Sam Bothman.)

Mr. Nicoson: He testified, and the record will show whether it is overtime or not.

Trial Examiner Erickson: Let's proceed. I am sorry I interrupted. I just wanted to be sure the facts were in the record.

Q. (By Mr. Shapiro) Do you know in what part of the month of September you had the conversation with these boys?

A. I don't recall the exact date, no. It was one morning. I think it was on a Saturday morning, but I don't recall the date. [644]

Q. As a matter of fact, is there any way that you can state definitely whether it was in September or in some other month? Do you have an independent recollection of exactly when it was?

A. I am almost sure it was in September. That particular morning there was a Mr. Singer that was standing out on the sidewalk, and I asked him to step over and listen to the conversation that we were having.

Q. And did he? A. He did.

Q. Now, will you state that conversation?

A. I said,—

Mr. Nicoson: I object, repetitious. He has already told us two or three times.

Mr. Shapiro: He has never stated the conversation in the presence of Mr. Singer.

Trial Examiner Erickson: He may state the conversation.

The Witness: I said, "Now, look, Quinn, and Vito, and Berteaux, I want you boys to come back

(Testimony of Sam Bothman.)

to work, and I want you to remember that I am asking you to come back to work on this particular date."

Q. (By Mr. Shapiro) Anything else said?

A. And I said, "If you don't come back to work, I will have to have somebody to take your place."

Then I turned around to this gentleman, and I said, [645] "Remember you are hearing this conversation. Remember it if it is necessary that I call you to witness this at some future date."

Q. Did you at that time state that you wouldn't have anything to do with the union or any group, and that these men could come back individually or they would never come back?

A. I don't recall saying that, no.

Q. Did you call Vito on the telephone on July 26th?

A. I don't recall the exact date. I did call Vito on the telephone once, that I recall, but I don't remember the exact date.

Q. Did you at that time state to him, "Those shysters can't do anything for you"? Did you make that statement?

A. I can't recall making that statement.

Q. What did you say to Vito?

A. I asked Vito to come back to work.

Q. Anything else?

A. It seems to me like I asked him why he went out, whether or not he was satisfied there. And he said, "Yes."

And then it seems to me like he told me that the

(Testimony of Sam Bothman.)

reason he went out is some of the older boys had been in favor of it, and as long as he was the last employee that had taken the job, he didn't want to hold back, something to that effect.

Q. Did you tell him you would close the shop before you [646] would sign an agreement with the union?

A. No, I don't recall telling him that at all.

Q. Did you tell him that Miss Lee would go back to Texas and you would open a small shop of your own?

A. I can't recall telling him that.

Mr. Nicoson: When is all this happening?

Mr. Shapiro: This is the telephone conversation of July 26th.

Mr. Nicoson: Thank you.

Q. (By Mr. Shapiro) Now, Mr. Swartz has testified that he talked to Mr. Quinn at his home. Did you know that Mr. Swartz was going to talk to Mr. Quinn?

A. No, I didn't, but I know he did talk to him, because he told me of it later on.

Q. Did Mr. Swartz tell you before he spoke to Mr. Quinn that he was going to talk to him about coming back to work? A. No.

Q. Did you ever authorize or instruct Mr. Swartz, or anyone else, to talk to any of these men?

A. I did not.

Mr. Nicoson: I object to that as calling for a conclusion.

Trial Examiner Erickson: Overruled.

('Testimony of Sam Bothman.)

Q. (By Mr. Shapiro) What did you tell Mr. Swartz, when he told you that he had talked to Mr. Quinn? [647]

A. I told him he had no business going out there, that it was none of his business, that I was taking care of the situation between the employees and Lettie Lee.

Q. What did he say?

A. He didn't say very much. I didn't make an issue out of it.

Mr. Nicoson: I object to that and move to strike as not responsive.

Trial Examiner Erickson: It may be stricken. Now, answer the question: What did he say, if anything?

The Witness: I don't recall exactly what he said at that time.

Trial Examiner Erickson: All right.

Q. (By Mr. Shapiro) Did Mr. Swartz tell you that he was going to talk to Vito on the telephone before he called him? A. He did not.

Q. How and when did you find out that Mr. Swartz had talked to or was talking to Vito?

A. Well, I walked up while he was talking to Vito on one occasion, the only one that I know anything about, and I heard him talking to Vito and trying to get him to come back to work.

Q. What did you say, or what did Mr. Swartz say? A. What did I say to Mr. Swartz?

Q. Or what did he say to you? [648]

A. Mr. Swartz said he had asked Vito to come

(Testimony of Sam Bothman.)

back to work. It seems to me that was the words. However, I ignored the proceeding completely, because I didn't feel he had any business doing that, and I just walked away from the situation entirely. I didn't discuss it with him at all.

Q. All right. Now, has Mr. Swartz at any time had the authority to hire or fire employees?

A. He has not.

Mr. Nicoson: I object to that. It calls for a conclusion of this witness. The evidence is contrary to that, and he is attempting to impeach his own witness.

Mr. Shapiro: Whose evidence is contrary?

Mr. Nicoson: Mr. Swartz'.

Trial Examiner Erickson: Let the answer stand.

Mr. Shapiro: Mr. Swartz never testified he had authority to hire and fire.

Trial Examiner Erickson: The record will speak.

Mr. Shapiro: May I have the question and the answer read, please?

(The question and answer were read.)

Q. (By Mr. Shapiro) To your knowledge, has Mr. Swartz ever discharged or fired an employee?

A. Not that I know of.

Q. Has Mr. Swartz ever hired an employee, without first obtaining your permission? [649]

A. I don't think so. Not that I know of.

Q. How many production employees were there on your payroll on July 23, 1941, the day before the strike? A. What is the date?

Q. July 23, 1941.

(Testimony of Sam Bothman.)

Trial Examiner Erickson: Are we going into exact figures now, or estimates like you did yesterday?

Mr. Shapiro: No, exact figures.

Trial Examiner Erickson: All right.

Mr. Shapiro: We have a synopsis here.

Mr. Nicoson: Then I object.

Trial Examiner Erickson: Go ahead. I would like to have it.

Mr. Nicoson: I insist on the payroll being the best evidence.

Trial Examiner Erickson: I would rather have him tell it than have to count them.

Q. (By Mr. Shapiro) Will you answer the question, please? A. What was the question?

Mr. Shapiro: Will you read the question?

(The record was read.)

Mr. Nicoson: I will ask him this question: You have got a paper there in front of you, haven't you?

The Witness: Yes, sir.

Mr. Nicoson: What do you propose to do with it? [650]

The Witness: It has the number of employees—

Mr. Nicoson: What do you propose to do with it? Testify from it?

Mr. Shapiro: I will stipulate with you that he proposes to look at it unless the Court tells him not to.

Mr. Nicoson: Let's let the witness do the answering of the questions, will you, please?

(Testimony of Sam Bothman.)

Mr. Shapiro: If the Court tells me to stop making objections, I will stop.

Mr. Nicoson: You are not making objections. You are instructing the witness.

May I have an answer, Mr. Examiner, please?

Trial Examiner Erickson: There is a question pending.

The Witness: What is the question?

Trial Examiner Erickson: What do you propose to do with the paper, is the question?

The Witness: I propose to refer to this, so that I will give a fairly accurate answer as to the number of production employees that we had on the particular dates that are written on this particular paper.

Mr. Nicoson: What do you mean "fairly accurate"?

The Witness: Because I did not copy it myself. It was done by a girl in the office, so I can't tell you whether this is accurate or is not accurate. It is supposed to be taken from the payroll. [651]

Mr. Nicoson: I object to the use of it, to the witness refreshing his recollection from this piece of paper.

Trial Examiner Erickson: Use the payroll then.

Mr. Shapiro: All right. Use the payroll. I think this would have been a short cut.

Trial Examiner Erickson: Well, I think so too. I will overrule the objection for the present time. Go ahead. If it is wrong, I can find out. I have the payroll.

(Testimony of Sam Bothman.)

Mr. Shapiro: All right.

Q. (By Mr. Shapiro) Now, look at that document you have in front of you, and tell me how many production employees did you have in your factory on July 23, 1941?

Mr. Nicoson: Objected to until he explains what production employees are.

Q. (By Mr. Shapiro) All right. Then will you do this: Will you name the number of the employees in each particular classification that you are using in arriving at the total? Go right across the page and give us the numbers.

A. Assorters, four; cutters, ten; drapers, eight; time workers, 30; finishers, eight; operators, 32; pressers, five; sample makers, ten; designers, three.

Trial Examiner Erickson: What was that date?

The Witness: This is July 25th. This is the pay day of July 25th.

Trial Examiner Erickson: All right. [652]

Q. (By Mr. Shapiro) That would include July 23rd, would it?

A. This is the pay for the week ending July 25th.

Q. All right. Now, what is the total of those particular departments, the total of the number of employees in those particular departments on that date?

A. 106. That is unless I have made a mistake in my addition.

Q. Add it again and make sure you are right.

(Testimony of Sam Bothman.)

A. I get 110 this next time.

Q. The third time is the charm.

A. All right. 110.

Q. How many employees went out on strike on July 24th? A. On July 24th—

Mr. Sokol: That is calling for the conclusion of the witness as to whether or not they went out on strike. How many workers were not there?

Mr. Shapiro: I will ask it that way.

Trial Examiner Erickson: He may answer it then, with that modification.

The Witness: I didn't get that question.

Q (By Mr. Shapiro) The question is: How many of your employees—

Trial Examiner Erickson: Did not return to work?

Mr. Sokol: That is it.

Q (By Mr. Shapiro) —did not return to work on July 24th? A. On July 24th? [653]

Q. The day of the strike.

A. Well, I can't answer that exactly from this record.

Q. Well, I know you can't, but do you know how many of your employees did not come back to work the day of the strike?

A. The day of the strike?

Q. Yes.

A. I think there were about 20 that did not come in to work; 19 to 20, something like that.

Q. Out of your total payroll of production employees of 110? A. That's right.

(Testimony of Sam Bothman.)

Q. How many of those 19 or 20 were cutters?

Trial Examiner Erickson: Are you using the term as descriptive of the classification on the payroll or as a craft designation?

Mr. Shapiro: I am using the term as descriptive of the classification on the payroll.

Trial Examiner Erickson: All right. Go ahead.

Q. (By Mr. Shapiro) How many cutters went out?

A. You mean how many cutters were working that morning? Is that what you mean?

Mr. Nicoson: That isn't what he said.

Mr. Shapiro: I will withdraw the question.

Q. (By Mr. Shapiro) How many cutters went out when the strike was called and did not come back to work to the [654] factory? A. Six.

Q. Are those the six who are named in the complaint in this action? A. They are.

Q. Then the difference between six and the 19 or 20 walked out of other departments in your factory; is that correct? A. That's right.

Mr. Sokol: That is not—

Trial Examiner Erickson: Well, didn't return to work is what you mean?

Mr. Shapiro: Yes, did not return to work.

The Witness: That's right.

Q. (By Mr. Shapiro) They came from other departments in your factory other than the cutting department? A. Correct.

Q. Now, you testified on your examination when

(Testimony of Sam Bothman.)

Mr. Sokol called you that you hired guards during the strike? A. I did.

Q. Why did you hire guards?

A. To bring the people in and out of the building so they wouldn't be molested.

Q. Well, what happened, if anything, that made it necessary for you to hire guards?

Mr. Sokol: That is objected to. [655]

Mr. Nicoson: I object to that.

Trial Examiner Erickson: It is overruled.

The Witness: Because there were crowds of people downstairs and in front of the building, and the people were a little scared to come in, so rather than have our employees go through the heckling that was downstairs, why, we had the guards drive them in the garage in the morning, and take them out in the evening. Some of the girls were a little afraid, they said that they had had threats.

Mr. Nicoson: I object to what the girls said.

Trial Examiner Erickson: Are you contending there was violence in the strike?

That will be stricken.

Mr. Shapiro: Yes, there was violence.

Trial Examiner Erickson: Are you contending that as a defense for not reinstating?

Mr. Shapiro: No, your Honor, but the matter was gone into by Mr. Sokol, and that was the reason I was going into it.

Trial Examiner Erickson: Yes, proceed. All right. I was just trying to get your contentions.

Q. (By Mr. Shapiro) Do you know how many

(Testimony of Sam Bothman.)

manufacturers of ladies dresses there are in the city of Los Angeles?

A. I can't give it to you exactly, but I think there are somewhere between 75 and 125; between that number, I would [656] say.

Mr. Nicoson: 75 and 125?

The Witness: Yes, between 75 and 125. I could not make a more accurate guess. I don't know.

Mr. Shapiro: I believe that is all.

Trial Examiner Erickson: We will recess for ten minutes.

(A short recess was taken.)

Trial Examiner Erickson: The proceeding will come to order.

Mr. Shapiro: I assume you want to wait for Mr. Nicoson?

Mr. Ryan: Yes.

Mr. Shapiro: I will be glad to state on the record that I would request the Court that, if we adjourn at 12:30, to reconvene at 2:00 o'clock today instead of the customary 1:30.

Trial Examiner Erickson: We will see what happens.

Mr. Shapiro: I have just one further question of Mr. Bothman.

Q. (By Mr. Shapiro) Mr. Bothman, you were in the court room when Mr. Wishnak, representative of the union, testified? A. Yes.

Q. You heard him testify as to the standing or position in the industry of a cutter, particularly, the historical background? A. I did. [657]

(Testimony of Sam Bothman.)

Q. Do you have any knowledge or information on the history of cutters in the ladies garment manufacturing industry?

A. By that do you mean, have I had any experience?

Q. Do you know what the history of the cutter has been, the development, the importance of the cutter, say, 15 or 20 years ago and today?

Mr. Sokol: He has already testified.

The Witness: I can tell you the importance of a cutter, as of my experience for the past 15 years.

Q. (By Mr. Shapiro) All right. Will you tell the Court that, please?

A. About—well, I don't remember the exact dates—we will say approximately 14 or 15 years ago, I decided to go into the manufacturing business, and that is when I first came in contact with the production end of dresses, in general. And it was always assumed that the cutting job was a very, very responsible job until they learned new methods of operation.

Mr. Nicoson: I object to this repetition. He testified to all this yesterday at great length. Why burden the record with a repetition of it?

Mr. Shapiro: I am not going to ask very many questions.

Trial Examiner Erickson: I think it is very important. Let him answer it again.

Q. (By Mr. Shapiro) Now, will you state those new methods, [658] and just what the situation is today that distinguishes the position or the im-

(Testimony of Sam Bothman.)

portance of the cutter from the position that he held 15 or 20 years ago?

Mr. Ryan: We object to the question on the ground it assumes a conclusion of fact, that it is different now than it was then.

Trial Examiner Erickson: Then let's ask the question first: Is it different than it was?

Q. (By Mr. Shapiro) Is it different today than it was 15 or 20 years ago?

A. The manipulation in the cutting section and cutting department in Los Angeles today is much more efficiently run and handled than it was in the industry as I saw it 15 years ago.

Mr. Nicoson: I object to that and move to strike it as not responsive.

Trial Examiner Erickson: That will be stricken.

Mr. Sokol: That answer was stricken. Let's read the question.

Mr. Nicoson: I object to the question.

Mr. Shapiro: Let's get the question.

Trial Examiner Erickson: The answer will be stricken. What is the question? Read it, please.

(The question was read.)

Mr. Shapiro: I think that what the Court wants— [659]

Mr. Nicoson: Wait.

Trial Examiner Erickson: Let him answer the question.

Mr. Shapiro: All right. I am sorry.

The Witness: For instance, to my knowledge,

(Testimony of Sam Bothman.)

15 years ago a carbon marker was never heard of in the cutting industry. In other words, a cutter got the pattern, he graded the pattern on paper as to size from 10's to 20's, and completed the complete operation of cutting findings, trimmings and everything.

In recent years we have found in the industry that we could improve the efficiency of cutting by adopting different methods. So, therefore, in our particular plant we have tried to get as much production out of our cutting room for as little number of hours as we possibly could. We found that by having one particular man grade the patterns—when I say "grade the patterns", I mean take the first pattern that comes from the sample room and then grade up all the sizes on paper; therefore, eliminating the responsibility of each individual cutter grading his sizes on paper.

Now, when a cutter was not forced to grade on paper, his responsibility and his knowledge did not have to be as great as one that had a knowledge of grading, because it is generally—

Mr. Sokol: I submit that this is all the opinion of this witness. [660]

Mr. Shapiro: Well, Mr. Wishnak gave his opinions.

Mr. Nicoson: It is certainly a repetition of what he said the other day, almost word for word.

Trial Examiner Erickson: All right. Let him answer it again. I am very interested.

(Testimony of Sam Bothman.)

The Witness: May I have the last part of that answer, please?

(The portion of the answer referred to was read.)

The Witness (Continuing): —conceded that the most important part of the making of a dress is the accurate grading, because if he allows a quarter of an inch on a shoulder where he should have allowed a quarter of an inch on the hips, the entire garment will come out lopsided. [661]

Q. Now, how many—

A. Pardon me, Mr. Shapiro. I am not quite through.

Q. Pardon me. Go ahead.

A. Therefore, in our program of making our cutting department more efficient, we designated one particular man to do this grading, and instead of grading on the paper, the soft paper, as formerly the cutters did, or on the cloth itself, they take a stiff paper, and he took a stiff paper—I will use that in the singular form, because we designated one person who did it—to do all the grading.

Q. Who is that?

A. In our particular place it was Mr. Swartz.

Q. All right.

A. So that all the grading would be accurate, this one man handled it, and he was responsible from then on for the grading of all garments, because we had a separate piece of paper for a size 10, a 12, a 14, a 16, an 18 and a 20, so that the cutters

(Testimony of Sam Bothman.)

would not have to grade the individual dresses.

Now, another reason for having it handled in that manner is because, when a man is grading on paper, he can never be as accurate as one can who is doing group grading on stiff paper, and has his mind definitely set on the particular grading; because sometimes a dress should be graded in one place for one style, and on another style the grading will [662] have to be handled entirely different.

So, therefore, a man that is considered a good grader in our industry also has knowledge of making a dress, and also knowledge of design and proportion.

So in former years a cutter with ten and twelve and fifteen years experience, that is so often spoken of in the cutting department, had experience through the entire manipulation, from the designing until the cutting of the cloth. In order for one person to be efficient in that manner, it really takes ten to fifteen or eighteen years, when you take grading, proper grading, into consideration. But we developed the system by which one man with the proper experience could handle that responsible position and make a mould, in other words, for all the rest of the factory to be guided from; so that that graded mould is from which we work.

Now, by doing that we eliminated a lot of mistakes, because a cutter would say that he had experience and that he was a good grader, and when

(Testimony of Sam Bothman.)

he would get ahold of a pattern and he would look at the dress, why, he would think that it should be graded under the arm hole, and at the shoulder, and it would be graded up on paper that way, and the dress would come out wrong. So due to the fact that we had a lot of trouble, we worked out a system, the system that I have just referred to, by having one standard grader handle the entire situation. [663]

Now, I know that that was—well, I wouldn't say I know that we were the first to adopt that system, but I know that we are one of the first that started along that one system of grading up individual patterns that is used in our place.

Trial Examiner Erickson: May I interrupt right here?

The Witness: Yes.

Trial Examiner Erickson: Does that particular fact of putting the responsibility on one person take away from the person who is known as the cutter any of his qualifications or abilities to do that same work in case he is called on to do it?

The Witness: It doesn't take that away, no.

Trial Examiner Erickson: Well, if you hire a man that is a cutter, is he expected to be able to do that?

Mr. Shapiro: You mean in the Lettie Lee plant?

Trial Examiner Erickson: In Lettie Lee, yes.

The Witness: Is he expected to be a grader?

Trial Examiner Erickson: Is he expected to be able to do what you have just described?

(Testimony of Sam Bothman.)

The Witness: No.

Trial Examiner Erickson: Do you know whether he is able to do it?

The Witness: We weren't particularly interested, so, therefore, I can't tell you whether he was able to do it or [664] not.

Trial Examiner Erickson: All right.

Mr. Sokol: May I ask a question there?

Trial Examiner Erickson: Yes.

Mr. Sokol: Mr. Swartz was the one that did the grading?

The Witness: He did practically all the grading.

Mr. Sokol: Yes.

The Witness: Miss Eunice Usher assisted him in some of the grading.

Mr. Sokol: Well, when Mr. Swartz was absent, who did it?

The Witness: I don't recall of anybody doing it while Mr. Swartz was absent, unless it was Miss Usher, who assisted him. She might have helped him. Mr. Swartz did the greatest percentage of all of the grading down in our place, and even Mr. Swartz at times had to consult with the designers to be positive of the correctness of certain types of grading in our place.

Trial Examiner Erickson: Is there any one of the six persons involved in this hearing who is unable to grade?

The Witness: I can't answer that question for you.

(Testimony of Sam Bothman.)

Mr. Sokol: Are you asking me?

Trial Examiner Erickson: No, I am asking the witness.

The Witness: They weren't hired for that purpose at [665] Lettie Lee, so I couldn't answer that question for you.

Trial Examiner Erickson: All right. Proceed.

Q. (By Mr. Shapiro) In the old days, speaking of ten or fifteen years ago, did a cutter also do the work of assorting, as a part of his job as a cutter?

A. Yes. In our first factory they did all their own assorting, all their trimming, cutting, and marking, and everything, and sent the merchandise out complete ready to go into the factory.

Now, in our operations, in our new methods, we try to figure it out; in fact, we did figure it out because, of course, necessity is the mother of all inventions, and we had to compete with the New York market.

Mr. Sokol: Now, what is this?

Mr. Shapiro: That is a classical reference that he is giving you.

Mr. Sokol: What are we getting off to? Is he up there for the rest of the day, to go on and on? Where are we now? What is the question?

Trial Examiner Erickson: Are you making the same objection you made yesterday?

Mr. Sokol: Well, I don't know what he is up to. Now, I mean, what line is he going to now?

(Testimony of Sam Bothman.)

Trial Examiner Erickson: Would you read the last question, Mrs. Zellner, please? [666]

(The question was read.)

Trial Examiner Erickson: Do you have the question now, Mr. Sokol?

Mr. Sokol: Just so the witness has the question.

Trial Examiner Erickson: Yes. Proceed.

Mr. Shapiro: Will you please read the answer?

(The answer was read.)

Q. (By Mr. Shapiro) All right. Is the system different today than the system that you referred to as being in vogue ten or fifteen years ago?

A. The system we are using at the present time and have used for the last three years at Lettie Lee is different from that system.

Q. In what respect?

A. In the respect that each individual person has his own particular line of work to do, and no one person in our factory makes a complete garment. It is more or less an assembly line.

For instance, the cutter gets—the head grader gets the first design, he grades up the pattern completely, and then the next operation it goes to is the marker, who makes the carbon markers, which I showed you previously here in the court-room.

We found that in doing it in that manner the question of whether the knowledge of one par-

(Testimony of Sam Bothman.)

ticular cutter was good enough [667] to make a marker close enough to save material was never a question any more in our factory, because we made our master markers, and they decided the complete question as to the material. I did not have to go over to a cutting table and stand beside a cutter and measure the amount of material that it would take to cut a dress, because my master marker was made, and all I had to do was to check the original first marker. Then I had a set quota to go by, because the responsibility was definitely on the marker. And that was the only thing that I checked, to find out whether or not this particular marker could be laid closely.

I stated—I think I stated that the reason for cutters taking such a long time years ago to make markers was because when they were working on high priced silk materials, and the hour's wage was less, that it paid the concern to have them work out and save a certain amount of yardage.

Trial Examiner Erickson: Let's try to avoid this repetition.

Mr. Shapiro: That is repetition.

Mr. Nicoson: He is repeating exactly, almost word for word, what he said yesterday.

Trial Examiner Erickson: Yes, there is quite a bit of repetition.

Mr. Shapiro: I have no further questions.

Trial Examiner Erickson: All right. There are no [668] further questions. You may cross-examine.

(Testimony of Sam Bothman.)

Mr. Nicoson: I still want to put my objection on the record.

Trial Examiner Erickson: It is on the record.

Cross Examination

Q. (By Mr. Nicoson) Were you ever a cutter?

A. Sir?

Q. Were you ever a cutter?

A. Was I ever a cutter?

Q. That's what I said. A. No.

Q. You never operated a table in your life?

A. That's right.

Q. The only thing you know about it is what someone has told you; is that correct?

A. No, sir.

Q. Well, how did you find it out?

A. Because I am with the cutters, and I have been associated with the entire manipulation of the dress manufacturing business for the last fourteen years or fifteen years.

Q. Now, which is it, fourteen or fifteen?

A. Between that time. I don't recall the exact time.

Q. I thought you testified here, on one of your trips to the stand, that you were mainly interested in the sales end of the business. [669]

Mr. Shapiro: That is objected to as being not a correct statement of the evidence, Your Honor.

Mr. Nicoson: Well, I will ask him.

Trial Examiner Erickson: Let him so state. You may answer.

(Testimony of Sam Bothman.)

The Witness: May I have the question?

Mr. Nicoson: Read the question.

(The question was read.)

The Witness: In the sales and productive end, that's right.

Q. That is right?

A. Sales and production, and general managing.

Q. I think you testified, did you not, that at some stages of your experience you were entirely engaged in sales work?

A. That's right, but not with Lettie Lee, Inc. I had my experience in the cutting end of it years and years and years ago. I manipulated and ran a factory where I employed 30 cutters at one time right here in the City of Los Angeles. My experience has not only been limited to the Lettie Lee concern.

My productive experiences are wide and considered rather extensive from the fact that I was able to produce and ship and sell out of the City of Los Angeles as many as 200,000 dresses a year.

Q. Very laudible. But how much of your time has been spent [670] in sales work?

A. In sales work?

Q. Yes.

A. There has been more time spent in the past five or six years in sales work than it was previously to the last five or six years.

Q. That is right. How much of your time in

(Testimony of Sam Bothman.)

the last five or six years have you devoted to sales work?

A. Well, it is very problematical, it is very hard for me to answer that question for you.

Q. I understand that. Give us your best recollection.

A. Well, there were periods that sometimes I would be out on the road for a couple, three months. Then there were periods that I would sell in the show room and they would call me out from the back of the factory. I mean in the last three years, since 1939, I have been in the factory of Lettie Lee, Inc., at least 90 percent of the time.

Q. So that when you said a moment ago, if I so understood you, that the biggest portion of your time in the last five years was devoted to sales work, that wasn't true? A. Sir?

Q. Read the question, please.

(The question was read.)

A. I don't recall making that statement.

Q. Well, if you did make it, it wasn't true, was it? [671] A. That's right.

Mr. Shapiro: Now, I don't like to have this record carry the inference that the man has made statements that aren't true, and if there is any confusion as to what he said, I think it should be explained.

Mr. Niceson: The record will show it.

Mr. Shapiro: I will ask Mr. Bothman what his

(Testimony of Sam Bothman.)

answer is, Your Honor, so there is no guesswork about it.

Trial Examiner Erickson: Mr. Nicoson is speaking of what is in the record. Proceed.

Mr. Nicoson: The answer is in the record.

Mr. Shapiro: I think we are splitting hairs anyway.

Q. (By Mr. Nicoson) Now, Mr. Bothman, on August 13th you had a conversation with Mr. Sargent of this office, didn't you, in 1941?

A. August 13th?

Q. Yes.

A. I don't recall the exact date. I did have a conversation with Mr. Sargent, but I don't recall the exact date.

Q. Well, would you say it was not that date?

A. No, I wouldn't say the exact date, because I don't recall the exact date, no. I did have a conversation after I received a letter from Mr. Walsh. I had a telephone conversation first, I think, with Mr. Sargent.

Q. With Mr. Sargent. That was about a week or so after [672] you got your letter from Mr. Walsh; is that correct?

A. I don't recall the exact dates. It was along in that period of time, yes.

Q. Along in the fore part of August, wasn't it?

A. Yes.

Q. And you talked to Mr. Sargent about the charge that had been filed against you by the Union, didn't you? A. That's right.

(Testimony of Sam Bothman.)

Q. You had—

A. (Continuing) I don't know exactly what our conversation was the first time I called him. It seemed to me like I called him on the phone, and he told me to answer the questions, I think, that was in a letter that was sent to us.

Q. You hadn't gotten that letter yet, had you?

A. I mean, I don't recall that experience exactly there.

Q. That is right. You first had a telephone conversation with Mr. Sargent, and then Mr. Sargent sent you a letter? Isn't that the way it was?

A. It seems like that could have been. I can't recall.

Q. And that is the letter that is in evidence here as Respondent's Exhibit 2, which I will show you? I am correct in that, am I not?

(Handing document to witness.)

A. Yes, that is correct.

Q. And the date of that letter is August 13, 1941, isn't it? [673] A. That's right.

Q. That's right. Now, at that time you had a conversation with Mr. Sargent concerning the unit, didn't you?

A. It seems to me like he told me that—let's see—I can't recall the exact conversation that I had with Mr. Sargent, whether it was before this letter. I was in his office. I was in his office—

Q. That was the second conversation you had with Mr. Sargent, wasn't it?

(Testimony of Sam Bothman.)

A. The one that I was in the office?

Q. In the office. The first one was a telephone call? A. Phone call, that's right.

Q. And you had a conversation with Mr. Sargent about the unit? Am I right in that?

A. On the telephone, you mean?

Q. Let me help you: In which you stated that the entire plant was the appropriate unit?

A. Well, I don't recall whether that was on the telephone in the first conversation or not. I don't recall it. I know I spoke to him with reference to that matter, and whether it was in his office or on the telephone call, I don't recall.

Q. Let me show you Respondent's Exhibit 2 again, and I will ask you if that exhibit doesn't show that it is in confirmation of the telephone conversation with you on that date.

A. Yes, this does. [674]

Q. And it sets out there—

A. That's right.

Q. —the subject of your telephone conversation?

A. That's right. So I must have talked to him in reference to this matter.

Q. Then you had talked to him in reference to the cutters? A. That's right.

Q. And you told Mr. Sargent you thought the entire plant was the appropriate unit?

A. That's right.

Q. And you also told Mr. Sargent that there

(Testimony of Sam Bothman.)

were eight cutters in the claimed unit at that time, six or seven of whom were on strike, didn't you?

A. I don't recall exactly what I told him at that time.

Q. Mr. Sargent in Respondent's Exhibit 2 so states, doesn't he, in confirmation of your telephone conversation?

Mr. Shapiro: I submit that the letter is the best evidence of its contents, Your Honor.

Mr. Nicoson: He has it before him.

Trial Examiner Erickson: Yes, he has it before him.

Q. (By Mr. Nicoson) Isn't that true?

A. Well, it says here in the letter. I don't recall telling Mr. Sargent on the telephone conversation at that time that we had seven or eight cutters in the cutting room.

Q. Do you recall not telling him that? [675]

A. No.

Q. When this letter was introduced in evidence yesterday, you testified that you did receive this letter? Am I correct in that?

A. That's right.

Q. And that you immediately answered it? Am I correct in that?

A. I don't think that I testified that I immediately answered this letter.

Trial Examiner Erickson: I made a particular note of that. You said you immediately answered.

Mr. Nicoson: I did too.

(Testimony of Sam Bothman.)

Trial Examiner Erickson: Yes. I had in mind there the August and September dates of the original and the answer.

Q. (By Mr. Nicoson) But, as a matter of fact, you didn't answer Mr. Sargent's letter until September 11th, at which time you wrote what is in evidence as Respondent's Exhibit 3? Isn't that correct? I show you Respondent's Exhibit 3.

(Handing document to witness.)

A. Now, let me answer you.

Q. You answer my question, please.

A. Well, I am trying to.

Q. All right.

A. I know between these two intervals that I answered Mr. Sargent immediately, either by telephone or by mail. Now, I [676] answered Mr. Sargent, I think on the telephone, the next day or two after I received this letter, and I am not sure, it might have been the same day I called him on the phone.

Q. Are you sure of that?

A. I am positive I called him on the telephone, yes.

Q. You are very positive?

A. I think Mr. Sargent will verify that, if you call him to the courtroom.

Q. Then why did you write this letter?

A. Which letter?

Q. Showing you Respondent's Exhibit 3.

A. Because Mr. Sargent asked me to write this letter.

(Testimony of Sam Bothman.)

Q. And why did you wait a month to do it?

A. Because I walked over to Mr. Sargent's office and wanted a conference with him a couple of times, which I had, and one time he was unable to see me until a week later, he was either on his vacation or there was some reason why I couldn't see him. I took this up with Mr. Sargent two or three times, and I think if you will check with Mr. Sargent, he will verify that.

Q. Because of your inability to reach Mr. Sargent you delayed more than a month in putting in— A. I did not delay.

Q. Well, didn't you? Isn't that the date here, August 13th and September 11th here? Am I right in that, sir? [677] A. Just a moment.

Q. Am I right in that, sir? Answer me "yes" or "no."

A. I would like to have the full question first, before I can answer you under that.

Mr. Nicoson: Read the question, please.

(The question referred to was read as follows: "Q. Because of your inability to reach Mr. Sargent you delayed more than a month in putting in—")

Mr. Nicoson: I think I said "the substance of your conversation"?

Trial Examiner Erickson: No, you didn't, but you may put it in your question now.

The Witness: No. I had several conversations with Mr. Sargent. I called him on the phone, and

(Testimony of Sam Bothman.)

I think I asked permission as to whether or not he could see me at a certain time. I don't remember the exact date. I think he will recall some of the conversations, if you will call him on the stand, and I am sure that I told him that I would answer that letter after I got over and had a chance to talk to him. It seems to me that was a part of our conversation. However, I am not positive. It may be as fresh in Mr. Sargent's recollection as it is in mine.

Q. (By Mr. Nicoson) Isn't it a fact, Mr. Bothman, that you didn't answer Mr. Sargent's letter until you had received Mr. Sokol's letters demanding reinstatement of the six cutters [678] and demanding bargaining with the Union?

A. I don't think so.

Q. Let me show you Mr. Sokol's letters.

Mr. Shapiro: I submit that the letters show the dates upon which each letter was written, and the conclusions can be drawn by the Examiner.

Q. (By Mr. Nicoson) I show you what is in evidence as Board's Exhibit 8, and which I think you said you had received.

(Showing document to witness.)

Mr. Shapiro: What is the date of that, Mr. Nicoson?

Q. (By Mr. Nicoson) And that is dated September 9, 1941, isn't it? A. That's right.

Q. That is right. Thank you, sir.

So after having these conversations with Mr.

(Testimony of Sam Bothman.)

Sargent and having received Mr. Sokol's letter, you then concluded to write this letter which is Respondent's Exhibit 3?

A. After I—after conversing with Mr. Sargent, going over and talking to him either one or two times in his office, and maybe one or two times over the telephone, I asked exactly what was required of me from the National Relations Board, and in accordance with our conversations I answered the questions as this letter states.

Mr. Nicoson: I move to strike the answer as not [679] responsive.

Trial Examiner Erickson: Let it stand.

Mr. Nicoson: I beg your pardon?

Trial Examiner Erickson: It will stand.

Mr. Nicoson: May I have the answer read so that I can find out just what he said?

Trial Examiner Erickson: All right. You may.

(The answer was read.)

Mr. Nicoson: Now, may I have the question?

(The question was read.)

Mr. Nicoson: I submit that isn't responsive.

Trial Examiner Erickson: I have ruled.

Q. (By Mr. Nicoson) Now, about the time that the letter was written which is in evidence as Respondent's Exhibit 3, you had a conversation with Mr. Sargent, didn't you?

A. Repeat that question, please.

(The question was read.)

(Testimony of Sam Bothman.)

A. It might have been previous to that time. I am not sure.

Q. Well, you did have about that time?

A. I had conversations along in that entire period with Mr. Sargent, but I don't recall the exact dates.

Q. You told Mr. Sargent that the Union only represented seven of the cutters, didn't you?

A. Sir? [680]

Mr. Nicoson: Read the question, please.

(The question was read.)

A. No. As I recall, our conversation—in my conversation with Mr. Sargent I told him the same contents that is in that letter that I wrote to him.

Q. (By Mr. Nicoson) Well, would you say you didn't tell Mr. Sargent that the Union only represented seven cutters?

A. I would have—if I would have made a statement of that type, I would probably have said they only represented six cutters.

Q. Would you say you didn't?

A. I don't recall.

Q. You don't know whether you did or not?

A. I don't recall, no, sir.

Q. You could have made that statement?

A. It doesn't seem very logical that I might have made that kind of statement and write a different kind of a letter.

Q. Could you have made that statement?

A. I don't think that I could have.

(Testimony of Sam Bothman.)

Q. It is impossible for you to have made that statement, is it?

A. No, it is not impossible for me to make any statement.

Q. Then you don't know whether you made it or not? A. That's right. [681]

Q. Thank you. Now, at the time you wrote that letter which is Respondent's Exhibit 3, Kathryn Lembke wasn't working in your plant, was she?

A. She was on a leave of absence.

Q. Will you please answer the question?

A. Sir?

Q. Read the question, please.

(The question was read.)

A. No.

Q. Mr. Thain wasn't working in your plant, was he?

A. No, he was also on a leave of absence.

Q. I understand that to be your testimony. Now, when Mr. Thain left, as you say, he told you he was in ill health; is that right? A. That's right.

Q. And you said, "All right, go ahead and take a leave of absence, and build yourself up," or something like that; is that right?

A. No. I told him to go ahead and stay as long as he wanted to stay, and whenever he would come back, I would give him back his job, as he was one of the oldest cutters we had on the place, and besides, the brother to the president of the corporation, that we felt like we would extend him that

(Testimony of Sam Bothman.)

courtesy of giving him back his job when he come back to it. [682]

Q. You didn't know whether he would ever come back, did you?

A. I had an idea he would be back within the year.

Q. But you didn't know? A. No, sir.

Q. You dropped him from the payroll?

A. Like we drop everybody else that doesn't work. If they don't work, certainly, we drop them from the payroll. Nobody is paid except on the hour in our place, except the week workers.

Q. Then why didn't you drop Kathryn Lembke; if that is your practice?

A. She was dropped during the payroll as far as being paid is concerned.

Q. Her name showed on the payroll, didn't it?

A. For that quarter. As I stated in my previous testimony, in reference to the Social Security Tax, I notice that all of the names were carried through on that payroll up and through that quarter period.

Q. And the succeeding period too? Am I right about that?

A. I am not sure about that. I think they carried them through for the quarter period. Then if the particular person doesn't appear on the payroll, they add it on later on. So I am not sure about that. [683]

Q. Do you have to make a report to the Social Security Board as to any persons carried on your payroll?

(Testimony of Sam Bothman.)

A. No, but it is very convenient for the girl, when she handles her payroll, to take those names in a row like that, because it is quite a little job to make out those Social Security reports.

Q. But do you make quarterly reports to the Social Security Board— A. That's right.

Q. —of the number of people on your payroll? A. Individually?

Q. And their names too, sir?

A. Yes, and they have to be classified and numbered.

Q. And if their names are not on the payroll, you don't make a report, do you, sir?

A. That's right.

Q. That is right. Thank you, sir. Now, didn't you tell Mr. Sargent that you had refused to talk to Mr. Sokol about bargaining with his Union?

A. I don't recall exactly that I told him that. I probably might have told him that.

Q. Well, you are not sure about it?

A. That's right.

Q. You could have told him that?

A. I could have told him that, yes. [684]

Q. But that was your opinion, was it not?

A. Sir?

Mr. Nicoson: Read the question, please.

(The question was read.)

The Witness: What is my opinion, is what I want to know.

Trial Examiner Erickson: You mean you don't understand the question?

(Testimony of Sam Bothman.)

The Witness: I don't understand the question.

Trial Examiner Erickson: All right. Give him a question he understands.

Mr. Nicoson: Let's have the preceding question and the answer read, then, please.

(The question was read.)

The Witness: It was my opinion of what is what I want to know.

Q. Well, you didn't talk to Mr. Sokol about bargaining with his Union, did you?

A. I did not.

Q. And you told that to Mr. Sargent, didn't you?

A. That I hadn't conversed with—I don't recall that I did.

Q. You don't recall?

A. Whether I did or not, no.

Q. Well, did you ever talk to anybody from the Union about [685] this?

A. Authorized agents of the A. F. of L.?

Q. Anybody connected with the I. L. G. W. U., even if it is only the janitor down in their office building? Did you ever talk to anybody about it?

A. Even if it is just the janitor?

Q. Even just the janitor. I don't care.

A. A member?

Q. Anybody that has any connection at all with the I. L. G. W. U. A. I talked to Vito.

Q. You talked to Vito? A. Yes.

Q. About not bargaining with his Union?

A. No, sir.

(Testimony of Sam Bothman.)

Q. That is what we are talking about now. Now, I will again ask you if you have talked to anyone in any way, shape or form, connected with the I. L. G. W. U., about bargaining. A. No, sir.

Q. Nor about the unit, have you, sir?

A. No, sir.

Q. I believe the evidence shows, Mr. Bothman, that male cutters, or those shown on your payroll as male cutters, receive a basic wage of \$45.08 a week. Am I correct in [686] that? A. Correct.

Q. And that Eunice Usher, Dorothy Richard and Kathryn Lembke receive \$24 a week?

A. I am not sure exactly as to the amounts. Approximately correct, I believe.

Q. The payroll will show the correct amount, in that neighborhood, will it not?

A. That's right.

Q. Why is it that you have such a marked differential between the male cutters and these three ladies that I have just mentioned, in pay?

A. Because it is customary in the industry that that has been the truth for a number of years. The exact reason for that I can't tell you. However, if you will make a survey of the industry, you will find that the women cutters do receive a much lower wage than the men cutters do.

Q. Do you always follow the custom of the industry, sir?

A. I am forced to, in order to compete with the selling price with my competitors.

Q. I thought you just got through a long, a

(Testimony of Sam Bothman.)

lengthy speech, telling how you had departed from the custom in order to increase your efficiency, so you could compete with the New York market.

A. That's right. [687]

Q. Am I possibly wrong about that?

A. You are absolutely correct.

Q. That you have pulled entirely away from the custom as it used to be, in order to modernize your business?

A. Improve it as much as we knew how, yes.

Q. And yet you haven't seen fit to modernize your pay scale; is that correct?

Mr. Shapiro: I am going to object to that. It isn't in issue what the ladies' cutters were paid, nor are they complainants in this proceeding.

Trial Examiner Erickson: This is a question of the practice.

Mr. Shapiro: And may I also say——

Trial Examiner Erickson: The objection is overruled.

Mr. Shapiro: May I also say this: That Mr. Bothman, to the best of my recollection, testified that they have modernized the production. He has not testified, that I can remember, that they swung away or didn't swing away from the rest of the industry in so far as the wage or pay scale is concerned. The one certainly has nothing to do with the other.

Trial Examiner Erickson: It may be important. I would like to know.

(Testimony of Sam Bothman.)

The Witness: Read the question.

(The question was read.) [688]

The Witness: It has been modernized to the point of where it is in direct competition with the practices of the Los Angeles industry.

Q. (By Mr. Nicoson) You have pretty stiff competition in Los Angeles, don't you?

A. I would say it is fair, yes.

Q. And you have pretty stiff competition in New York, don't you? A. Much stiffer.

Q. And in order to meet that large competition, you have to operate just as economically as possible?

A. Correct.

Q. Isn't it a matter of good business judgment to not pay \$45 a week for something you can buy for \$24, sir?

A. I would, generally speaking. I would say that would be true, yes.

Q. Why isn't it true in this case?

A. Because we were unable to secure men that would do their work efficiently, or other women, unless we paid the wages specified in the payroll.

Q. So you don't want to pay the women that way; is that correct? A. Sir?

Mr. Nicoson: Read the question, please.

(The question was read.) [689]

Mr. Shapiro: May I have a running objection to this entire line of questions?

Trial Examiner Erickson: You certainly may. It is overruled.

(Testimony of Sam Bothman.)

The Witness: I am willing to, if the rest of the industry does, yes.

Q. (By Mr. Nicoson) I am not talking about what you are willing to do. I am asking you about what you do do.

A. We don't at the present time, no.

Q. (By Mr. Nicoson) You would like the record to show and for the Board to believe that you are now paying \$45 a week for work you can get done for \$24; is that right? A. Correct.

Q. Didn't I understand you to testify the other day that the reason you didn't talk to Mr. Sokol was because you didn't think his Union had a majority of the employees in your plant?

A. That's right.

Q. You testified to that? A. That's right.

Q. You also testified, did you not, that you didn't know how many employees in your plant belonged to the Union? A. That's right.

Q. Well then, how do you know whether or not Mr. Sokol's Union represented a majority of your employees? [690]

A. Because over 80 per cent of them came in to work during the strike.

Q. That is the only way you have got to judge?

A. That is all I have go to go by, yes.

Q. And that is your only reason?

A. That's right.

Q. So far as you know, your entire plant may be members? A. I do not know.

Q. You do not know? A. That's right.

(Testimony of Sam Bothman.)

Q. The only persons you positively know belong to this Union are the six complainants in this case?

A. As far as I have had proof of it?

Q. Yes.

A. That's correct. And the proof is the cards that I have seen.

Q. That's right. Well, you don't have any other kind of proof, do you?

A. That is what I say, no.

Q. And you have—

A. (Continuing): That is the positive proof itself. The only positive proof that I know of is these six cards I have seen here on exhibit, and it seems to me like those particular cards were in Mr. Sargent's office the day that I was over there talking to him. Now, I am not sure if they are the [691] exact cards, but there were some red cards that were attached to a piece of paper that he had, either a complaint, or whatever it was that he had.

Q. Did he show you the cards?

A. I recall seeing some cards there, and I don't remember just exactly how they were gauged, or all the names that were on them.

Q. Now, tell me, if you will, please, sir, and kindly answer my question: Did Mr. Sargent show you the cards? A. Yes, he did.

Q. And when did he show them to you?

A. When I was in his office.

Q. Just about the time you wrote the letter on September 11th,—correct?

(Testimony of Sam Bothman.)

A. I think it was before that, quite a little while before that, in my first visit.

Q. How long before?

A. My first visit.

Q. On your first visit?

A. I think on my first visit to his office, he showed me the cards.

Q. When was your first visit, please, sir?

A. I don't recall the exact date.

Q. Do you have any idea?

A. It was sometime after the letter that was written to me [692] by Mr. Walsh. It could have been a week, it could have been ten days after I received the letter from Mr. Walsh that I was in Mr. Sargent's office.

Q. And it could have been a month?

A. Well, no, it wasn't that long.

Q. As a matter of fact, Mr. Bothman, you weren't in this office in respect to this particular case until about September 11, 1941; isn't that right?

A. I don't think so. That is the reason I am trying to explain to you.

Q. And that all other contacts you had with Mr. Sargent were over the telephone? That is right too, isn't it?

A. I don't recall, as I told you before, whether I made two trips up here, or whether I had two or three telephone conversations with Mr. Sargent or not. I don't recall them exactly. I don't know whether Mr. Sargent made notations of the dates.

(Testimony of Sam Bothman.)

However, it was all during the course of that period that we are referring to that this happened.

Q. Well now, as a matter of fact, Mr. Bothman, it really wasn't a matter of unit at all, was it; it was a matter that you just wouldn't bargain with the Union under any circumstances; isn't that correct?

A. It is definitely a unit.

Q. That is a plain fact; isn't it?

A. Certainly. Six people out of a factory of 110 certainly [693] don't represent a unit. It is not a representative body.

Trial Examiner Erickson: Will you read the last question and answer, please?

Mr. Nicoson: I am satisfied with it.

Trial Examiner Erickson: All right.

Mr. Shapiro: I may have missed something. May I have it read. I would like to have it read.

Trial Examiner Erickson: All right. Will you read the last question and answer, please?

(The question and answer were read.)

Trial Examiner Erickson: The question before that, too.

(The record was read.)

Mr. Shapiro: "A unit question."

Mr. Nicoson: She didn't say "question."

Mr. Shapiro: I am asking that. I am allowed to make a statement.

Mr. Nicoson: You are not allowed to dictate into the record.

Mr. Shapiro: I am not trying to.

(Testimony of Sam Bothman.)

Trial Examiner Erickson: Go ahead, read it, please.

Mr. Shapiro: I would like to know what the answer is.

Trial Examiner Erickson: Well, when she is reading she gives the answer and then she says, "Question," and then she follows it with the question that was asked. [694]

Mr. Shapiro: I beg your pardon.

Mr. Sokol: The Trial Examiner is certainly not going to decide the issue on that.

Mr. Shapiro: I thought it might have something to do with the answer.

Trial Examiner Erickson: That word "question" is not in the answer of the witness. Read it again, please.

(The record was reread.)

Trial Examiner Erickson: All right. We will let it stand.

Mr. Shapiro: May the witness be allowed to explain the answer, if he cares to?

Mr. Nicoson: Wait a minute. What goes on here?

Mr. Sokol: Take him on redirect.

Trial Examiner Erickson: Go ahead. Proceed.

Mr. Shapiro: I am frank to state, your Honor, I have never been accorded less courteous treatment by any counsel in any case. I don't like to say that.

Mr. Nicoson: And I don't mind saying that I

(Testimony of Sam Bothman.)

have never been up against a counsel who has struggled more valiently to instruct a witness on the stand than Mr. Shapiro.

Trial Examiner Erickson: We will not have any more of that. Just go ahead with the examination.

Q. (By Mr. Nicoson): As I understand your testimony, sir, you stated that you did not offer Mr. Sardo, Mr. [695] Baliber or Mr. Castella reinstatement after the strike? A. That's right.

Q. That is correct. I now show you Respondent's Answer, which is in evidence as Board's Exhibit 1-J, and I will read to you Paragraph IX.

"Denies generally and specifically each and every of the allegations contained in paragraph 11."

I am sorry. I am reading from Paragraph XI. My Roman numerals aren't so good.

"Further answering the allegations of said paragraph, respondent alleges that it has requested its said employees to return to their work and has offered to reinstate the said employees to their former positions."

Now, that isn't true, is it?

A. It is, with the exception of these two boys.

Q. And to those three, it is not true, is it?

A. That's right.

Q. And you swore to this, didn't you, before a notary public? That is true, isn't it?

Mr. Shapiro: That is objected to.

Trial Examiner Erickson: Overruled.

(Testimony of Sam Bothman.)

The Witness: Yes.

Q. (By Mr. Nicoson): But that is your signature when you swore to that? (Indicating).

A. That is my signature, yes, sir. [696]

Q. And you didn't swear to the truth, did you?

Mr. Shapiro: That is certainly argumentative.

Trial Examiner Erickson: It may be, but I will overrule your objection.

The Witness: I won't say that that was wholly an untruth. No, I can't answer it that way, because I did ask these particular boys that I mentioned to come to work; and these other two, I did not request that they come back to work.

Q. The other three?

A. The other three, that's right.

Q. And then when you said in your answer that you had, that wasn't true? Am I right about that, please, sir? Yes or no?

A. I have to answer it—

Q. Please, sir, yes or no?

A. Wait a minute.

Q. Please, sir, yes or no?

Mr. Shapiro: Is the witness permitted to answer the question?

Mr. Nicoson: He is not permitted to evade it.

Trial Examiner Erickson: He is permitted to answer it, yes.

Mr. Nicoson: Will you please read the question?

(The record was read.) [697]

(Testimony of Sam Bothman.)

The Witness: Well, my intentions were to say—

Q. (By Mr. Nicoson): Please, sir, answer it yes or no, and then you can make such explanations, as you want to.

When you signed this statement, when you swore to it before a notary public that you had offered these employees, all of them, reinstatement, it was not true? Is that correct? Yes or no?

A. I did not know—

Q. Well, please answer—

A. That I was signing anything that was saying that I offered all of them.

Q. Please, sir,—

A. I am telling the truth.

Mr. Shapiro: I object.

Trial Examiner Erickson: I am going to let it stand, and I am going to let the reporter read what he has said, and let him go ahead. I think maybe we are going to get to the bottom of what happened the first day here. Proceed, now.

The Witness: What was that?

(The answer referred to was read.)

The Witness: I also did not know that I was signing anything that I was offering anybody any employment that I did not need in our employment.

Q. (By Mr. Nicoson): Then why didn't you say so in your sworn answer? [698]

A. Well, I don't—I can't answer that, sir.

Q. You can't answer it? A. No.

(Testimony of Sam Bothman.)

Q. You read this before you signed it, didn't you?

A. I didn't read it any too carefully.

Q. But you did read it?

A. Yes, I read it over, and that is a passage that I just didn't notice too carefully.

Q. You did read it? A. That's right.

Q. And you swore to it before a notary public?

A. I did.

Mr. Shapiro: I will stipulate that he did.

The Witness: My signature is there.

Q. (By Mr. Nicoson): Now, Mr. Bothman, do you know, of your own knowledge, whether any of these six men, and by that I mean men mentioned as complainants in this case, have ever done any marking in your factory?

A. Done any marking? You mean carbon marking, or do you mean—

Q. Any kind of marking?

A. Yes, they probably have at various times, when a marker wasn't made, or something like that, or a short marker, they probably made markers.

Q. These men have made markers? [699]

A. Yes, but not carbon markers.

Q. How do you know they never made a carbon marker?

A. Because that is handled by one individual, and I usually check most of the carbon markers for yardage, and I don't recall ever having been called back by any of these boys mentioned to check one of these carbon markers.

(Testimony of Sam Bothman.)

Q. Were you in there all the time?

A. No, sir.

Q. Then you don't know what they do all the time?

A. Not all the time, no, not every minute of the day.

Mr. Shapiro: Before we get too far away from this point, will you mark in your notes, Miss Reporter, the passage that we had the set-to about, with respect to the question of the unit, because I want to refer back to that later, and it may be easier for you to find it now and mark it, or if you will give me the page number, I will mark it down.

Trial Examiner Erickson: Do you mean the part that she reread two or three times?

Mr. Shapiro: Yes, right.

Trial Examiner Erickson: The reporter may mark that page.

Q. (By Mr. Nicoson): Now, there wasn't anything wrong with Sardo's work, was there?

A. Not that I know of, no, sir. [700]

Q. As far as doing his work, he did a good job, didn't he?

A. Like the average cutter, yes, as far as I know.

Q. Did you ever have a woman cutter in a plant that received more than Usher or Lembke?

Mr. Shapiro: That is objected to as being incompetent, irrelevant and immaterial, and not in issue in this case.

Trial Examiner Erickson: Overruled.

(Testimony of Sam Bothman.)

Mr. Shapiro: There is a question pending, Mr. Bothman. Will you answer it?

The Witness: Yes. But I don't—

Q. (By Mr. Nicoson): Do you know Anne Block? A. Anne—

Q. Block? A. Anne Block?

Q. Block?

Mr. Sokol: I will give it the German brogue, Anne Bloch.

Q. (By Mr. Nicoson): B-l-o-c-k, Anne Block?

A. Yes, I have a recollection of having a girl cutter by that name.

Q. Do you recall paying her \$35 a week?

A. No, I don't recall what her salary was. However, I don't think you will find it was \$35 a week.

Q. When did she work for you?

A. She worked, I think, in 1939 and 1940, but I am not [701] sure. I will have to check the records on that to find out for sure about it.

Q. You don't know whether you paid her \$35 a week?

A. I am almost sure she didn't get \$35.

Q. Are you positive?

A. No, but I can get a definite answer by referring to the records.

Q. Do you want to bring the payroll in?

A. I can get a more definite answer by referring to the payroll.

Q. I would like for you to bring in the payroll.

(Testimony of Sam Bothman.)

Mr. Shapiro: Will you be satisfied with the witness' statement that he has looked at the payroll and what it shows?

Mr. Nicoson: No, sir.

Mr. Shapiro: Then you had better tell me what payroll record you want.

Q. (By Mr. Nicoson): Will you do that?

Mr. Shapiro: Yes, we will bring it in, if you want it.

Mr. Nicoson: I will submit that this—

Mr. Shapiro: I can tell you that.

Mr. Nicoson: Let's let the witness answer the questions.

Trial Examiner Erickson: All right.

Mr. Nicoson: When I want to question counsel, I will [702] put him on the stand.

Trial Examiner Erickson: All right. What is your answer, Mr. Witness?

The Witness: Yes.

Q. (By Mr. Nicoson): Will you bring it this afternoon?

A. Yes, if our recess will give me time to get over to the factory and get back.

Q. Let's don't have any qualifications. Will you or will you not bring it?

Mr. Sokol: Well, let's get to that at the noon recess.

Mr. Shapiro: May I have permission to say something, Your Honor?

Trial Examiner Erickson: Yes.

(Testimony of Sam Bothman.)

Mr. Shapiro: I will assure counsel and the Court that the record will be here at 2:00 o'clock.

Trial Examiner Erickson: All right.

Q. (By Mr. Nicoson): Now, when you had this conversation with Vito Cimarusti, Don Quinn and Nolan Berteaux out in front of your plant there in September, why did you find it necessary to call over Mr. Singer, to have a witness?

A. Because I wanted them to definitely know that they were invited to come back to work, so there wouldn't be no question about it.

Q. And that was after you had received Mr. Sokol's letter which is in evidence as Board's Exhibit 8, under date of [703] September 9, wasn't it?

A. Well, I don't recall the exact dates on that.

Q. You don't know whether it was or not?

A. Whether it was before the letter was received or after, I don't know that, no.

Q. If it was on September 27th, on Saturday, as you say, then it was after?

A. I said it was on Saturday, I didn't remember the date. However, if it were on the 27th, and the letter was written on the 9th, it was evidently after the time that it was done.

Mr. Nicoson: That is right. I think that is all.

Mr. Sokol: How long are we going to continue?

Trial Examiner Erickson: Well, what further is there after this witness?

Mr. Sokol: Oh, I have a few questions.

(Testimony of Sam Bothman.)

Trial Examiner Erickson: I know. I mean after we finish with this witness, is there anything further?

Mr. Shapiro: I may have one more witness, Your Honor, and in that case, Mr. Sokol—may I have your attention, Mr. Sokol ? Will you have in court at 2:00 o'clock, or whenever we reconvene, Mr. Wishnak, or whatever his name is?

Mr. Sokol: I will make every effort to have him here.

Mr. Shapiro: I wish you could answer that a little more definitely.

Mr. Sokol: Positively. I will call him right now. [704]

Mr. Shapiro: You will have him here.

Trial Examiner Erickson: And you, Mr. Shapiro, will you have Miss Lembke and Miss Usher here at 2:00 o'clock?

Mr. Shapiro: Certainly.

Trial Examiner Erickson: Then we will recess now for lunch until 2:00 o'clock.

Mr. Shapiro: As far as I am concerned, I want to say that I don't stand on any ceremony, and if there are any records or any witnesses that the Court wants produced, I will produce them without a subpoena.

Trial Examiner Erickson: Yes, you have been very cooperative. I appreciate it. I take it, we are finishing today?

Mr. Shapiro: Yes.

Trial Examiner Erickson: That is the reason I am going over until 2:00 o'clock.

(Whereupon, at 12:15 o'clock p.m., a recess was taken until 2:00 o'clock p.m.) [705]

Afternoon Session

(The hearing was reconvened at 2:00 o'clock p.m.)

Trial Examiner Erickson: The proceedings will come to order.

Mr. Shapiro: If your Honor please, we have the two young ladies you requested me to have here. Would it be all right if your Honor questions them now so they can go back to work?

Trial Examiner Erickson: Yes. I will ask Miss Lembke to come to the stand.

KATHRYN LEMBKE,

called as a witness by the Trial Examiner, was examined and testified as follows:

Direct Examination

By Trial Examiner Erickson:

Q. I have only one question, Miss Lembke: I want you to tell me the size of the pattern that is given to you when you start your work?

A. Well, many sizes.

Q. Well, give me the ordinary size.

(Testimony of Kathryn Lembke.)

A. Well, whatever the order is for. I am not quite sure if I understand you, sir.

Q. You have a pattern?

A. We get a cutting ticket with maybe three 14's and three 18's and 6 12's.

Q. Well, take the biggest one that you have. How big is [706] the biggest you get?

A. Size 20.

Q. Now, describe that to me in inches or feet or whatever description you want to give.

A. Well, each dress is a different length.

Q. That is right.

A. If you have an elaborate dress, naturally the marker would be longer than if the dress is very simple.

Q. I want to know the average size of the marker that you get for the kind of work that you did, I will say, prior to the strike of January 24, 1941.

Mr. Shapiro: That is July 24th.

Q. (By Trial Examiner Erickson): July 24th; yes.

A. Well, I can give you an average size, but I am not—well, I will say four yards is a good average.

Q. No, I don't think you understand my question. I would like to know the size of the paper that you get as a marker.

A. How wide the paper is?

Q. Yes, width and length.

A. Well, the length depends on the size and the style of the dress. You understand that.

(Testimony of Kathryn Lembke.)

Q. Give me the average.

A. They are all entirely different.

Q. Give me one then.

A. Four yards I will give you as an average, and the paper [707] is about—we have 39 inch paper; we have 40 inch paper. We have different widths of paper. It depends upon the material. If we are cutting jersey we need wider paper.

Q. As I understand it, you cut—

A. Dresses.

Q. —from a marker? A. Yes.

Q. And that marker is given to you?

A. Yes—no, I get it.

Q. Yes. A. Yes.

Q. You get it from— A. Yes.

Q. —a certain ticket. That is part of your work during the day? A. Yes.

Q. Is that right? A. Yes.

Q. Now, I will take an ordinary day prior to the strike. A. Yes.

Q. Which was July the 24th. How big was that paper? I mean in inches or feet or whatever you want.

A. I can't give you—I never measured in inches or feet. I just lay the marker out on a clean piece of paper and cut it off the length of the marker. I very seldom measure [708] it in inches and feet.

Q. I understand that. Do you have any understanding of an approximation in feet or inches of that paper that you get?

A. Yes. Well, I still maintain that a good aver-

(Testimony of Kathryn Lembke.)

age would be four feet—I mean four yards, for most of the dresses that I have cut prior to that date.

Q. That is the paper that you got on the ticket that was yours in the morning? A. Yes.

Q. Was four yards?

A. That is an average.

Q. All right. A. A generality.

Q. What does that piece of paper contain? What was on that paper?

A. Well, it has blue or red lines of the carbon, from the carbon paper, where the pattern has been marked in the most space saving way. The pattern has been laid on this paper and marked around it, and I have to cut that and on the inside of each piece of pattern it has the size, if it is 16, it is 16; and the style number it has once on each marker because each style is different.

Q. Well, I still don't know what is on that paper.

A. Well, I will see if I can make it clearer. There is a [709] straight line at the end of the paper signifying where the marker begins.

Q. What do you mean by "where the marker begins"?

A. Well, if I could show you with a piece of paper, or something, I could explain it.

Q. All right. I will give you a piece of paper.

Mr. Shapiro: I don't mean to interrupt, but would it facilitate matters any if the witness were shown any of the exhibits?

(Testimony of Kathryn Lembke.)

Trial Examiner Erickson: It might, but I will give her a piece of paper.

The Witness: For instance, this is how the marker looks.

Trial Examiner Erickson: Let the record show that she has a piece of yellow paper, that is lined, and she has put a square—

The Witness: A rectangle.

Trial Examiner Erickson: A rectangle on the inside of the paper.

The Witness: This is signifying about the shape of the marker. We will say this is a four yard marker. It doesn't have the given length on the marker anywhere.

Q. (By Trial Examiner Erickson) You are speaking about the marker. Is that something you get from somebody?

A. I get it myself out of the bin.

Q. Who makes that marker? [710]

A. The man who makes the marker, that happens to be Litwin in this case. The marker I get from Mr. Litwin will look like this. Then here it has a line, and has various shaped patterns.

Trial Examiner Erickson: Let the record show that the paper that the witness is using is Trial Examiner's Exhibit No. 1, and she has made a mark on what I would call the north part of the paper, and I have marked it "N"; and she has drawn a line, which is a quarter of an inch, by the exhibit, south of the rectangle that she originally made.

(Testimony of Kathryn Lembke.)

(Thereupon the document referred to was marked as Trial Examiner's Exhibit No. 1, for identification.)

The Witness: This is a poor drawing. The pieces of the pattern are fitted on this marker so that they will most conveniently take up the space of the paper without wasting any, because this paper is going to be just the exact size of the material. Well, do you want me to try and mark in all the pieces of the pattern on here?

Q. (By Trial Examiner Erickson) If you will tell the record just what you mean by it, yes.

Mr. Shapiro: Why don't you mark them "A", "B", "C", and so on, every time you put anything in there?

Trial Examiner Erickson: That is all right.

Mr. Shapiro: For instance, you have drawn two figures within the rectangular area. Mark them "A" and "B" and [711] state what they are, and so on.

The Witness: They would be the front blouse. They will both be "A" because they are each one half of the front blouse.

Q. (By Trial Examiner Erickson) Mark them both "A" then.

A. I can't really make a pattern—a marker without a pattern I mean.

Q. All I want to know is what you do.

A. Oh, all right. Then I take this marker, which has all these patterns drawn out on it. First I roll a plain piece of paper on the table. It comes

(Testimony of Kathryn Lembke.)

on a roll, a 39 inch roll, or a 42 inch roll of paper; and I roll it out on the table. Then where this line is here I fold my first piece of paper over like this (indicating) square with the table edge here so that it will be a perfectly straight line here (indicating).

I lay this blue carbon line on the straight of the marker, right on top of my fold on the paper line here. I then unroll this marked that has all these figures on it, these pattern figures. And where this paper marker ends, there will be another line. I therefore cut off my paper at that same spot, thereby knowing how long to make my material.

I then unroll my roll of material and I bring it down to the end. I have taken this marker with the figures off already. I have rolled it off. All I have left on the table [712] is a white piece of paper with the fold on this end, and cut off here at the right length.

I lay my material on this end where the fold of my paper is, and I place weights across the end of the material. I then stretch my material out straight, even it out with the selvege edge, straight with the edge of the paper here; and this edge straight with this fold so that my grain will be absolutely correct.

Then I tear off my material—I notch my material where the end of the marker is. I tear it across. I unroll my marker on top of my material, again placing the blue line on the beginning of the material; and I proceed to cut it out.

I am afraid that is rather mixed up.

(Testimony of Kathryn Lembke.)

Q. I think it is too. All right. Take your seat.

A. All right.

Q. I am still wondering about the first operation that comes to your attention in the performance of a day's work.

A. Oh, I look at my cutting ticket.

Q. All right, what is that?

A. It is a white sheet of paper that says—it has size 10, 12, 14, 16, 18, and 20 across the top.

Q. All right.

A. And it has different sizes marked down. It may have black, navy blue, print, down the first column. [713]

Q. All right. We will grant you have your cutting ticket now. Now, then, we are talking about a period— A. Yes.

Q. —just prior to July 24th. A. Yes.

Q. What is your next operation after you get your ticket? I mean as of that date.

A. Well, presume I had a size 12 dress to cut.

Q. All right.

A. So I therefore go over to the wall and it will be style, we will say, oh, 500, to make it general. I go over to the wall under the zeros and get down my 500 pattern. My 500 pattern will say "cut with marker 500." I will go to the bin where the markers are. There are six markers, one to each size, tied together in a bundle.

Q. This is just before the strike?

A. Yes. I go to the bin and I take out the

(Testimony of Kathryn Lembke.)

marker that is size 12, because that is the one I am going to use.

I take it back to my table and unroll that marker. I unroll my sheet of paper and do the process which I just explained to you.

Q. All right.

A. And after I have completed cutting out the dress, I am all through with that dress, and I wrap it up. I cut trimming, if there is any trimming to be cut. I roll the [714] dress up in a bundle and I tie a string around the dress and lay it at the end of the table and proceed to cut another dress.

Q. All right; go ahead.

A. And after I have cut all the sizes on that ticket, as each size is cut, I circle the size on the ticket, signifying that it has been cut. After each size is cut, I either take it down to the assorters, or else the assorters come up and get it from me.

Then I look at my next ticket and do the same process over.

Q. Do you have a pattern of a complete dress?

A. Certainly.

Q. What do you call that?

A. Well, a sample dress, you mean?

Q. No, I mean a complete dress that is to be produced by Lettie Lee, Inc.

A. That is the pattern of that certain style.

Q. Do you ever see the marker for that?

A. Yes.

Q. What part of the marker do you see?

A. Well, whichever part I happen to be cutting.

(Testimony of Kathryn Lembke.)

Trial Examiner Erickson: All right, that is all.

Mr. Nicoson: May I ask a question?

Trial Examiner Erickson: Yes, you may. All the parties [715] may ask questions of this witness.

Cross Examination

By Mr. Nicoson:

Q. Now, when you were engaged in sloping, you don't follow this process that you have just recited, do you? A. No.

Q. What is the size of the paper you use, if you use a piece of paper, when you slope?

A. Well, every cutter has the same roll—every cutter has a roll of paper and they are most generally all 39 inch rolls or 40 inch rolls. It all depends.

Q. Do you use that four yard roll to slope with?

A. Yes.

Q. Why do you use all of it?

A. Well, it is much easier to get paper. The paper is much cheaper than material and it is much easier to get it off grain, if you can't have it straight this way and straight this way (indicating).

Q. But you don't use all of it; you just use a portion of it, which happens to be attached to the longer part. Am I right about that?

A. Well, you are talking about sloping?

Q. Yes; I am talking about sloping now.

A. Yes.

Q. That is right, isn't it? [716] A. Yes.

(Testimony of Kathryn Lembke.)

Q. You don't use all of the marker when you slope, do you?

A. Well, you don't use the marker to slope; you make your own marker.

Q. Oh, that is right. Now, when you slope, that is what I want to find out. A. Yes.

Q. What is the size of the paper, or marker, or pattern, or whatever you choose to call it?

A. Well, the marker is made on the same size paper as the plain paper that you lay underneath.

Q. Is it four yards long? Now, you are just sloping, you understand.

A. You have a roll of paper.

Q. I understand you have a roll of paper, but you don't use the entire roll, do you?

A. No. You don't cut off any certain length, you just unroll it on your table and leave it fastened on the roll.

Q. You take a portion of the marker?

A. No, you don't use the marker. You get the pattern then.

Q. Now, you get the pattern? A. Yes.

Q. And you mark off from the pattern, onto this piece of paper, the portion of the garment that you are going to slope? [717] A. Yes.

Q. Is that right? A. Yes.

Q. Now, let's suppose now that we are going to slope the skirt; is that a fair example?

A. Yes.

Q. As I understand, by sloping you make an arrangement, whereby you take it in at the waist

(Testimony of Kathryn Lembke.)

and allow for a slope to go over the hips; is that correct? Is that one of the sloping operations?

A. Well, sloping is because the material has to be tucked or pleated.

Q. Yes. A. You don't—

Q. Well, for example, we will say we have already pleated this piece of goods. It has been sent out; and now it comes back to you and you are to slope it. Now, let's say, for the example, that it is a skirt that we are about to slope. Then are your duties, for example, to make a provision whereby the waist comes in, then gradually comes to the hip measurements? Is that about right? If not, you correct me.

A. Well, enough material has been sent out to be pleated so that it will be larger than the piece that you are going to slope, because, naturally, some will fall away, so you have this large piece of pleating. [718]

Q. That is right.

A. It is not too much larger; it is just about the right size. You lay your pattern on the paper, make a marker, although you can lay the pattern right on the pleating, which is usually done, and take a piece of chalk. You have to lay the pattern on the right grain, mark around there, then proceed to cut it out. It is lying on the bottom paper though.

Q. Now, when you put the pattern on there, you don't use the entire pattern, do you; you just use a portion of it?

(Testimony of Kathryn Lembke.)

A. You use the parts that are needed for that style?

Q. So you don't use the entire pattern?

A. Not completely.

Q. We are just sloping this skirt.

A. You just use the skirt pattern.

Q. You just use a portion of that entire design?

A. Yes.

Q. Which is called the pattern? A. Yes.

Q. Is that correct? A. Yes.

Q. And that is the same whatever you happen to be sloping, whether it is, whatever you call these doo-dads on the front of the dress, blouse?

A. Bodice or blouse. [719]

Q. Bodice or blouse? A. Yes.

Q. Or panel that fits in the front of the waist, or whatever you call it. You just use the portion of the pattern, which is necessary to guide you in that sloping operation? A. Yes.

Q. (By Mr. Sokol) Before the strike, you devoted yourself mainly to cutting trimmings for the cutters, didn't you?

A. Yes. That is directly before the strike. A year before I—

Q. Now, please, I only asked you that question. You don't have to volunteer.

Cross Examination

By Mr. Shapiro:

Q. What did you do a year before the strike?

Mr. Sokol: Objected to.

Trial Examiner Erickson: Overruled.

(Testimony of Kathryn Lembke.)

The Witness: I cut dresses.

Q. (By Mr. Shapiro) Now, Miss Lembke, I will show you Respondent's Exhibit 5 in this case. Will you unroll that, or do whatever you like with it, and tell me what it is?

A. This is a Lettie Lee dress marker, size 16, and this part, evidently, you tear out for pleating, or tucking of some sort. It says "tear out" on here, and it has the size and the style. [720]

Q. Now, you referred in your answer to the Trial Examiner's question—the sound effects are here again, your Honor.

Trial Examiner Erickson: All right.

Q. (By Mr. Shapiro) You referred in your answers to the Trial Examiner's questions to a sheet of paper, which you said was about 39 or 40 inches wide; is that the piece of paper that you refer to as being about 39 or 40 inches wide? A. Yes.

Trial Examiner Erickson: I think it was four yards wide.

Mr. Shapiro: No; long, your Honor.

The Witness: Four yards long.

Mr. Shapiro: But I am asking about the width.

The Court: Oh, all right.

Q. (By Mr. Shapiro) 39 or 40 inches wide?

A. Yes.

Q. Is that the paper that you refer to?

A. Yes.

Q. And you refer to the paper as being about four yards long; is that the same paper that you refer to? A. Yes.

(Testimony of Kathryn Lembke.)

Q. You mean that if this were rolled out, you think it would be about four yards, or about 12 feet long; is that correct?

A. That is an average. [721]

Q. All right.

Would it be any better, your Honor, if we unrolled this on the table?

Trial Examiner Erickson: You may do anything with it you desire.

Mr. Shapiro: Will you step over here, Miss Lembke?

Trial Examiner Erickson: Let the record show that Exhibit 5 is being unrolled on the counsel table and that all parties are present to observe what is being done.

The Witness: This is the straight line which I was referring to on this end, and on the other end—

Mr. Shapiro: The witness has just referred to a blue line at the extreme end of the paper. Now, let the record show that the exhibit unrolled on the table is approximately 15 feet long.

Trial Examiner Erickson: Is there any objection to that?

Mr. Nicoson: No objection.

Trial Examiner Erickson: I will say 15 feet.

Mr. Shapiro: Or five yards, approximately.

Trial Examiner Erickson: All right.

Q. (By Mr. Shapiro) Is this the paper, which you said the length, or the average length would be about four yards? A. Yes.

(Testimony of Kathryn Lembke.)

Q. Now, what do you call this paper, this exhibit? [722] A. This is a marker.

Q. All right. Let's assume that this is your cutting table, the table that this is now spread out on, and you have received your ticket. You have gone to the bin and have obtained your marker for your first operation to commence the day's work. You understand that, Miss Lembke? A. Yes.

Q. Then you would obtain this marker; is that correct? A. Yes.

Q. Then what do you do with the marker? Just pretend that we are now in the factory and this is your cutting table.

A. First of all I cut it off right here.

Trial Examiner Erickson: I am going to caution you right here that that means nothing in the record.

Mr. Nicoson: When she said "cut off right here" she pointed to the portion of the exhibit on which Mr. Bothman this morning wrote the word "trim." There appears two parallel blue lines approximately, I would say, two and a half feet from the end of the roll.

The Witness: Wherever there happens to be such two ends with the double face, like this, this is approximately the width of the yardstick here, I would cut them both off.

Mr. Nicoson: By "double face" the witness refers to the two parallel blue lines drawn on the exhibit adjacent to the [723] word "trim" written there in lead pencil.

(Testimony of Kathryn Lembke.)

Trial Examiner Erickson: Is that so understood?

Mr. Shapiro: It is so understood.

The Witness: Yes.

Trial Examiner Erickson: All right.

Q. (By Mr. Shapiro) Now, Miss Lembke, you have stated so far that the first thing you would do would be to cut it off—would be to cut off the marker? A. Yes.

Q. At the two double lines that Mr. Nicoson, counsel for the Board, has just referred to; is that correct? A. Yes.

Trial Examiner Erickson: Now, do you mean that you separate the paper?

The Witness: Yes.

Trial Examiner Erickson: All right.

The Witness: Separate the paper and lay it aside, roll this piece up and lay it aside.

Q. (By Mr. Shapiro) When you say "this piece" you refer to the piece which is marked "flat crepe"? A. Yes.

Q. Is that right? A. Yes.

Q. Why do you cut it off and lay it aside?

A. Because the flat crepe is part of the trimming, and I [724] always cut my trimming in the end. If I should care to cut it first, I can lay the dress marker aside and cut this first.

Trial Examiner Erickson: Let me ask a question here.

Redirect Examination

Q. (By Trial Examiner Erickson) Are you the

(Testimony of Kathryn Lembke.)

first person that gets this building, as I called it this morning? A. Am I the first person—

Q. Yes, this exhibit that you are talking about now, are the first person who gets that?

A. Well, every cutter does the same process as I do.

Q. Do you mean that of the ten cutters, as was testified you had in the plant, each of the ten gets one of this same exhibit, No. 5, that you are talking about now?

A. No. This is my style. I mean if this should be the style of my ticket, this would be the style I alone cut at this time. They have other styles.

Q. All right. We will grant you that this is your style. Are you the first person who gets this long roll of paper that we have talked about, as Exhibit No. 5?

A. Well, other cutters may have cut it before me, not this sheet—

Q. Now, that is what I am trying to get at. Other cutters may have cut it before you. Now, what do you mean by that? Do you mean that they have cut this particular exhibit? A. No.

[725]

Q. Or the material that is shown to be cut on the exhibit?

A. Yes, the material that is shown to be cut on this, another carbon copy of the same exhibit.

Q. Well, now, to me, as I said this morning, you have the same thing here as you have in the con-

(Testimony of Kathryn Lembke.)

struction of a building. An architect has drawn this; is that right? A. Yes.

Q. And you call the architect a designer?

A. No. The one that draws this on here is our marker.

Q. Well, I mean the creator then?

A. Yes.

Q. And whoever creates it is the designer?

A. Yes.

Q. Then you make blueprints of the designer's creation? A. Yes.

Q. Is that right? A. Yes.

Q. What I am interested in is after the blueprint has been made, who is the first person who gets the blueprint?

A. If I am the first person to have that style on my cutting ticket, then I am the first one to get this blueprint. I can't get them all first.

Trial Examiner Erickson: All right.

Mr. Sokol: I think, Mr. Examiner, that what we have to bear in mind is that in an emergency, caused by a strike, [726] other conditions arise. I have sought to confine this to the period prior to the strike.

Trial Examiner Erickson: I think I have made it definite I am talking about a period prior to the strike. You understand that?

The Witness: Yes.

Mr. Sokol: She is talking about the present and she has been.

Trial Examiner Erickson: No. If there is any-

(Testimony of Kathryn Lembke.)
thing you have said that refers to after July 24th,
would you so state on the record.

The Witness: Yes, these markers are identical
to the ones we used then.

Q. (By Trial Examiner Erickson) I mean
what you are doing now is what you have done—

A. Yes.

Q. Prior to July 24th? A. Yes.

Q. All right. Now you have gotten the blue-
print. What do you do with it You are the first
person who has the blueprint from the designer?

A. All right.

Q. What do you do with it?

A. I have already stated that I cut it off. I
unroll my sheet of paper on my table, my clean roll
of paper on the [727] table.

Mr. Shapiro: Now, your clean sheet of paper on
the table, that is not this sheet of paper?

The Witness: No.

Mr. Shapiro: It is a plain white sheet of paper
with nothing on it?

The Witness: Nothing on it.

Q. (By Trial Examiner Erickson) Do you re-
move the marker from the table first?

A. Yes.

Q. All right. Let's assume we have picked this
marker up, this exhibit, we have taken it off the
table, and now you have laid a length of plain white
paper on the table; is that correct?

A. That is right. We will say it starts here.

(Testimony of Kathryn Lembke.)

I have rolled it down to that end. The roll is down at that end.

Mr. Shapiro: From one end of the table to the other.

The Witness: Yes.

Q. (By Trial Examiner Erickson) Do I understand you correctly, that this entire four foot roll is given to you the first thing in the morning?

A. I go and get it the first thing in the morning, yes.

Trial Examiner Erickson: All right.

Mr. Sokol: I believe you said "four foot"; you meant four yards? [728]

Trial Examiner Erickson: Yes, whatever it is.

Recross Examination

Q. (By Mr. Sokol) I want to get this off so I won't have to object any further. Before the strike you were cutting trims. Will you show the Examiner on this Exhibit 5 what you mean by cutting trims?

A. This part of the paper, right here, that has the flat crepe you would cut.

Q. That is right at the end of the paper?

A. Yes.

Q. That is all you did for how many months prior to the strike?

A. I had dresses to cut if they needed them.

Q. I am talking of before the strike, for months— A. Yes.

Q. —all you did was cut trims for the men cutters; isn't that right?

(Testimony of Kathryn Lembke.)

A. Unless they needed a dress and I would cut a dress.

Q. An individual dress? A. Yes.

Q. But you primarily cut all of the trims; that was your job? A. Yes.

Q. For months prior to the strike; isn't that right? A. Yes.

Mr. Sokol: Now, I submit it is immaterial what she did [729] at any other time.

Trial Examiner Erickson: I don't agree with Mr. Sokol. I am still relying on the answer I got from Miss Lembke, that before the strike, this entire exhibit that is being shown here, would be one of the first receipts that she got after she got her ticket in the morning; is that right?

The Witness: Well, if I had a ticket, this would be the first thing I do.

Redirect Examination

Q. (By Trial Examiner Erickson) All right. Now, after you got that, you performed the operations that were required of you in the shop; is that right? A. That is right.

Q. All right. Now, go ahead.

A. You want me to show you how I would cut it out?

Q. Well, I am going to ask you one question.

A. Yes.

Q. To me this entire four yard roll is like giving an architect, or a contractor I mean, a blueprint from the architect, and the contractor is supposed

(Testimony of Kathryn Lembke.)

to construct a building from this blueprint. Now, as I understand it from the testimony in this case, a person who is called a cutter can take this blueprint and, by his ingenuity and skill that he has, he can construct a building, which is the dress that eventually happens. And if I am correctly informed, and I [730] wish to be advised if I am wrong, the cutting operation is to the extent that if a particular dress doesn't fit the style of the girl, who buys the dress, it is the fault of the cutter. Am I wrong so far?

Mr. Bothman: That is not necessarily correct.

Mr. Sokol: Oh, now, Mr. Bothman.

Mr. Bothman: It isn't necessarily the fault of the cutter if a dress doesn't fit a girl. That is a very, very broad statement.

Trial Examiner Erickson: Tell me now how I differ.

Mr. Sokol: Mr. Examiner, Mr. Bothman is not on the witness stand.

Mr. Shapiro: He is under oath, and the Examiner asked to be corrected if he was wrong.

Trial Examiner Erickson: That is right, I did.

Mr. Bothman: For instance, if this particular mold that you have here is laid on the material and cut absolutely correct, there are several other processes that this dress has to go through.

Trial Examiner Erickson: I certainly think that you, as a manufacturer, would bear with me on the very essential human equation that might result, but I mean if you had a perfect model.

(Testimony of Kathryn Lembke.)

Mr. Bothman: And they cut according to this model.

Trial Examiner Erickson: And the material was cut [731] according to the pattern, or whatever you call this particular Exhibit 5, there wouldn't be any flaws in the dress. That would fit the girl who bought that particular model?

Mr. Bothman: Provided the balance of the garment was properly constructed, yes. That is right.

Trial Examiner Erickson: Well, we allow for what we call the human equation.

Mr. Bothman: That is right.

Trial Examiner Erickson: Is that right?

Mr. Bothman: That is right?

Q. (By Trial Examiner Erickson) Now, Miss Lembke,— A. Yes.

Q. I am going to give you this particular exhibit. Now, you get it in the morning with your ticket? A. Yes.

Q. Well, my wife is a perfect 12. Make her a dress out of this pattern and tell me what you do in the cutting. I don't mean that you are going to construct it, but I am going to ask you to tell me what you do about this pattern, or this marker rather.

A. This is a size 16. You mean what I would do to make a 12 out of it?

Q. No, make it a 16.

A. All right. Well, if she is a perfect 16, and if our sample is a perfect dress, then this will fit her. [732]

(Testimony of Kathryn Lembke.)

Q. I am asking you now to tell me what you do with this particular exhibit here, No. 5; and I am talking now about a period before July 24th.

A. Yes. My clean roll of paper is on the table. I will fold the end of my clean sheet of paper like this (indicating).

Q. You mean your clean roll of paper is something different from the exhibit?

A. Yes. Well, I have to have a clean roll in order to get her a perfect 16. I fold this straight with this edge clear across, so that I have a perfectly straight line. This is on a clean sheet of paper; we are assuming this is a clean sheet. I then lay my marker at this line here where I have cut it off, since this is the beginning of my dress here (indicating).

Q. All right. Now, tell the reporter what you mean by "here".

Mr. Shapiro: She is referring to the same line that Mr. Nicoson previously identified, as being the line marked "trim" by Mr. Bothman.

I think we really need two sheets of paper to make this demonstration.

Trial Examiner Erickson: Well, I will forego that examination. I will ask Miss Lembke one question. You don't have to answer that.

Mr. Shapiro: Your Honor, don't think that I object to [733] it. I am very happy to have the witness do it. Might I make this suggestion, your Honor? In my mind, for some reason, this entire procedure is very plain and I am at a loss to under-

(Testimony of Kathryn Lembke.)

stand the confusion. Apparently, there is something that your Honor doesn't quite get about this explanation.

I would make this suggestion: I am sure that Mr. Bothman will get for us the necessary cloth, the necessary white paper, and the shears, and let any of these girls, or anybody else cut it out and show it to your Honor, so that we can see what they actually do.

Trial Examiner Erickson: There is no confusion in my mind.

Mr. Shapiro: Then I am confused.

Trial Examiner Erickson: My portion of the case is to get the facts in the record to support the thoughts that I have.

I will call it the after creation of a garment, I am just wondering whether Miss Lembke could take the design of an architect and make a dress.

The Witness: Certainly I can.

Q. (By Trial Examiner Erickson) Can you?

A. Yes.

Q. Do you mean that you can take that paper there and produce the entire product?

A. I certainly can. I can make this paper myself. [734]

Q. You can make the paper yourself?

A. Not the paper, but the marks on the paper myself.

Q. Well, I am satisfied now. That is all I want with you.

Mr. Shapiro: I have no questions.

(Testimony of Kathryn Lembke.)

Recross Examination

Q. (By Mr. Sokol) I have a question, Miss Lembke.

You weren't working for the company in June, 1941, were you? A. No.

Q. Did you ever know of an increase given to the men cutters only?

Mr. Shapiro: That is objected to as being immaterial.

Mr. Sokol: It is quite material. It is the crux of this case.

Trial Examiner Erickson: It is overruled.

The Witness: What is the question?

Mr. Sokol: Read the question.

(The question was read.)

The Witness: I don't know of any at that time, although they have mentioned increases at various times to which I didn't pay any attention, because they were always kidding me.

Q. (By Mr. Sokol) But you knew that the men cutters had increases, all together as a group, when you didn't get any increase; isn't that right?

A. I wasn't there, sir. No, I didn't know about that [735]

Q. At other times? A. Other times?

Mr. Shapiro: Suppose you take the witness stand and sit down, if you are going to be questioned.

The Witness: I would be glad to cut this out if you would like to have me.

(Testimony of Kathryn Lembke.)

Q. (By Mr. Sokol) Will you take the stand, please. A. Yes.

Q. There is just one thing I would like to have you clear up for the Examiner. In June 1941 the men cutters alone got a wage increase?

A. Yes.

Q. Will you tell the Trial Examiner, if you know from discussion or otherwise, that the men got increases, as a group at other times when you did not get an increase with them? Will you tell the Examiner?

A. I don't know of any increase that they got, as a group, that I didn't get, that I knew of at any time.

Q. Did you ever get an increase when they got an increase?

A. I don't really know, sir. I don't think that my increases came when their did.

Mr. Sokol: That is all.

Q. (By Mr. Nicoson) Now, would you mind stepping down here for just a moment, please?

We still have before us this big long sheet of paper, [736] which you have unrolled, and which is Respondent's Exhibit 5, and when you were describing this paper, you said that you would begin by unrolling it on the paper, then you came down to the end which bears the word "trim" again to two parallel blue lines? A. Yes.

Q. I believe that I understood you to say that the first duty that you would do, if you were going to cut the dress, would be cut off the portion from

(Testimony of Kathryn Lembke.)

the word "trim" to the near end of the marker,
and lay that aside? A. Yes.

Q. Is that correct? A. Yes.

Q. Now, when you were cutting only trimming,
did you then only use the portion, this small por-
tion, which you have just described as having cut
off and laid aside? A. Yes.

Q. And you didn't use then the rest of this pat-
tern at all? A. No.

Mr. Nicoson: That is all.

Recross Examination

Q. (By Mr. Shapiro) When you were cutting
complete dresses, and not just trim, you used not
only the portion that Mr. Nicoson just asked you
about, which you cut off, but the rest—— [737]

A. Yes.

Q. ——of the marker; is that correct?

A. Yes.

Mr. Shapiro: All right. That is all.

Trial Examiner Erickson: And that was before
July 24, 1941?

The Witness: Yes.

Mr. Sokol: May we get the date? If it was six
years ago it isn't material, your Honor. When was
that exactly?

The Witness: I don't know exactly.

Mr. Sokol: You don't? That is all.

Mr. Shapiro: Just a minute. I don't want to
leave any inferences here that need to be cleared
up.

(Testimony of Kathryn Lembke.)

Q. (By Mr. Shapiro) When did you leave on your vacation just prior to July, 1941?

A. The latter part of May.

Q. All right. In the month of May, did you cut any entire dresses?

A. I don't recall, sir.

Q. Did you in the month of April?

A. I don't really know. I couldn't tell you what I cut yesterday, how many.

Q. Can you state whether in the year 1941 you cut complete dresses, as distinguished from only cutting trim?

Mr. Sokol: Objected to as leading and suggestive. [738]

Trial Examiner Erickson: Overruled.

The Witness: Yes; I have cut complete dresses in 1941.

Mr. Shapiro: That is all.

Now, I make this offer at this time.

Trial Examiner Erickson: What offer?

Mr. Shapiro: My offer is this: If there is anything that anyone wants cleared up, and if the facilities of our factory can be used to clear it up, I will recommend that at the Court's convenience, day or night, that we go there and that Miss Lembke, or Miss Usher, or anyone else go through the exact physical motions of everything that your Honor has inquired about, under exactly the circumstances and conditions prevailing during working hours.

Trial Examiner Erickson: There has been no suggestion of that kind of an examination. As a

(Testimony of Kathryn Lembke.)

matter of fact, I am going to excuse Miss Usher now.

Mr. Shapiro: All right. If your Honor is satisfied, I am satisfied. I simply wanted to make available any form of evidence that we have to satisfy everybody. Is there anything further, your Honor, or counsel?

Trial Examiner Erickson: Nothing further. Miss Usher and Miss Lembke can be excused. Thank you for coming.

(Witness excused.)

Mr. Sokol: Mr. Shapiro, will you call Mr. Wishnak out of turn? [739]

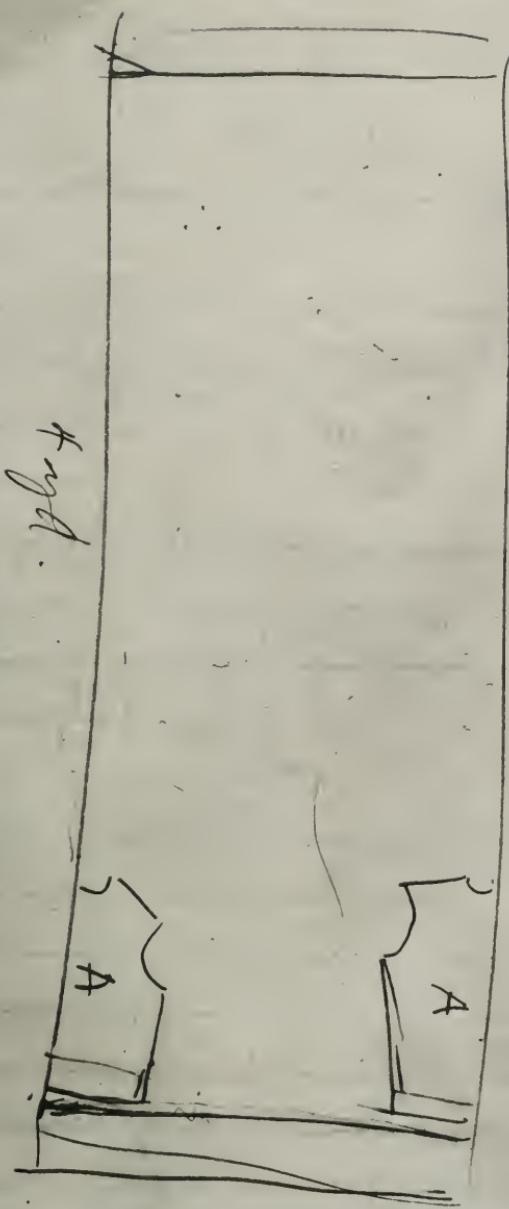
Mr. Shapiro: Yes.

Mr. Nicoson: Do you want to put this yellow sheet in the record?

Trial Examiner Erickson: Yes. That will be received in evidence as Trial Examiner's Exhibit No. 1.

(Thereupon the document referred to was marked as Trial Examiner's Exhibit 1, and was received in evidence.)

732



NATIONAL LABOR RELATIONS BOARD
PAGE NO. 1807 EXHIBIT NO. 1
IN THE CAUSE OF
WALTER J. GELBER, ALLEGEDLY
DANIEL W. ROSS, DEFENDANT
BY GEORGE L. SCHAFFER, ATTORNEY FOR DEFENDANT
ATTORNEY FOR PLAINTIFF
MAY 1947

M

Trial Examiner Erickson: I don't know if it will be very helpful. And I will charge Mr. Nicoson with making a copy of that.

Mr. Nicoson: I didn't catch that.

Trial Examiner Erickson: Read it, Mr. Reporter.

(The record was read.)

Trial Examiner Erickson: Off the record.

(Discussion off the record.)

GEORGE WISHNAK,

called as a witness by and on behalf of the Lettie Lee, Inc., having been previously duly sworn, was examined and testified as follows:

Direct Examination

Q. (By Mr. Shapiro) Are you an officer of the International Ladies' Garment Workers' Union?

A. Yes.

Q. What officer?

A. Representative of the International. [740]

Q. Representative of the International?

A. Yes.

Q. Do you hold any office, such as president of that or secretary? A. No, sir.

Q. But you are a representative of the International— A. Officer.

Q. Organization? A. Yes.

(Testimony of George Wishnak.)

Q. Now, the national organization, that is the I. L. G. W. U., has a lot of locals; doesn't it?

A. Yes.

Q. How many? A. I think about 300.

Q. And in Los Angeles how many locals does it have?

A. We have the cutters local, operators local, pressers, cotton goods dress local, and the sportswear local.

Q. The cutters, operators, pressers, cotton—

A. Garments.

Q. —cotton garments? A. Yes.

Q. And sportswear? A. Yes.

Q. Those are all the locals you have in the city of Los Angeles? [741] A. Yes.

Q. The cutters is Local No. 84, I think?

A. Yes.

Q. What is the operators?

A. Dress Operators, 96.

Q. Yes. A. Cloak Operators, 65.

Q. Dress Operators is 96? A. Yes.

Q. What is the Pressers? A. 97.

Q. What is 65?

A. Operators, Cloak Operators.

Q. Cloak Operators? A. Yes.

Q. Now, that is a local you didn't tell us about?

A. Well, I am just trying to tell you.

Q. Then you didn't give it to me in your first enumeration.

A. That is right. I didn't give it to you.

(Testimony of George Wishnak.)

Q. That makes another one, the Cloak Operators? A. Yes.

Q. So that in Los Angeles there are seven locals?

A. Yes.

Q. There is a joint board of Los Angeles, California, is there not? [742] A. Yes.

Q. Of the International organization, or the national? A. Two joint boards.

Q. What are those two joint boards?

A. One is the cloak joint board, and the dress joint board.

Q. Who are the representatives of the dress joint board in Los Angeles? A. I am.

Q. You are? A. Yes.

Q. Anyone else?

A. At the present time we don't have any except Cutters Local 84, Mr. Jack Haas.

Q. Is Louis Levy an officer or representative of the International Ladies' Garment Workers'?

A. Yes; he is vice-president.

Q. Is he a member of the joint board of Los Angeles?

A. He is the manager of the cloak joint board.

Q. And Ethel McGee, is she a member of the joint board?

A. She is the chairlady of the dress local 96, and she is a member of the dress joint board.

Q. And Rose Harrington?

A. She is chairlady of the executive board.

Q. Who is Abe Lankenson?

A. Who? [743]

(Testimony of George Wishnak.)

Q. Abe Lankenson, L-a-n-k-e-n-s-o-n.

A. I don't know.

Q. You don't know him? A. No.

Mr. Sokol: I think that is the Cutters' representative.

The Witness: Maybe you mean Tankenson. He is a member of the dress joint board, who is a cutter.

Mr. Sokol: He represents the cutters.

Q. (By Mr. Shapiro) Are you acquainted with an organization known as the Dress Association of Los Angeles? A. Yes.

Q. The joint board of the International Ladies' Garment Workers' Union, representing the cutters, operators, pressers, and cloak operators have an agreement——— A. Yes.

Q. ——with the Dress Association of Los Angeles; do they not? A. Yes.

Mr. Shapiro: I have shown this to Mr. Sokol. He has produced the original, pursuant to my demand, and he has compared it with the copy, and states that this is a true copy; and has asked me to use the copy in lieu of the original.

Mr. Sokol: I didn't ask you to use it. I will stipulate it is a true and correct copy of the original.

Mr. Shapiro: You prefer that your original not go into [744] evidence?

Mr. Sokol: That is right.

Trial Examiner Erickson: And you have a duplicate original?

Mr. Shapiro: Yes, I do. It is a mimeographed duplicate.

(Testimony of George Wishnak.)

Trial Examiner Erickson: I mean for the record you have another copy?

Mr. Shapiro: I haven't, but I will get it. I will ask, as a matter of fact, if Mr. Wishnak would, as a member of the board, get a duplicate?

The Witness: I haven't got one made up, but I will make one up for you.

Mr. Shapiro: Would you like to see this before I show it to the witness?

Mr. Nicoson: I certainly would.

Mr. Shapiro: Mr. Nicoson, will you stipulate that this is a true copy of the original agreement?

Mr. Sokol: My stipulation is sufficient.

Mr. Nicoson: That is good enough for me.

Mr. Shapiro: I will offer this in evidence.

The Witness: May I see it?

Mr. Shapiro: Yes.

Q. (By Mr. Shapiro) I will show you a mimeographed copy of an agreement, dated August 8, 1941, between the Dress Association of Los Angeles and the International Ladies' [745] Garment Workers' Union, and the Joint Board of the City of Los Angeles, State of California, composed of Locals 96, 97, 84, and 85, acting for and in behalf of all of the members of said locals.

A. I want to make one statement.

Q. I will give you all the opportunity you want. And I will ask you if you recognize this as being a true copy of the original, which counsel has handed me?

A. I haven't read it, but I should think it is. It looks like one.

(Testimony of George Wishnak.)

Trial Examiner Erickson: What is the purpose of the offer?

Mr. Shapiro: The purpose of the offer, your Honor, is to show that whenever the union deals or negotiates with manufacturers in the dress industry, they do so on behalf of all four locals; that is on behalf of all four of those crafts, the cutters, the operators, the pressers, and the cloak operators. And we offer it for the purpose of showing the custom and practice in the industry in the city of Los Angeles.

The Witness: May I make a statement.

Trial Examiner Erickson: You can make a statement. You are within your rights.

The Witness: May I make a statement on this agreement because there is— [746]

Q. (By Mr. Shapiro) I will ask the questions, if you don't mind.

A. I want to tell you about this agreement, what it represents.

Q. Mr. Wishnak, if you please. I want to be as courteous as I can.

A. There is something in the original which isn't here, and I want to tell you about it.

Mr. Shapiro: Then I will ask you to produce the original, pursuant to my demand.

Mr. Sokol: What do you refer to?

The Witness: I refer to the signature of the Mayor's Committee. This agreement was signed by the Mayor's Committee to which Mr. Bothman did not appear.

(Testimony of George Wishnak.)

Mr. Sokol: Well, I only have a copy.

Mr. Shapiro: Do you have a signed copy?

Mr. Sokol: Was it signed?

The Witness: Yes; it was signed.

Mr. Shapiro: I don't know if it was signed by the actual parties. It was signed.

I will stipulate it is a true copy, so let it go in.

The Witness: So there should be no misunderstanding I wanted to add this qualification. That is all.

Mr. Sokol: That will all come out on examination.

Trial Examiner Erickson: Do you offer that now? [747]

Mr. Shapiro: I offer the agreement of August 8th as Respondent's Exhibit 6.

Trial Examiner Erickson: If you will produce the copy, I will receive the exhibit. Mark it as being received.

(Thereupon the document referred to was marked as Respondent's Exhibit 6, and was received in evidence.)

RESPONDENT'S EXHIBIT No. 6

AGREEMENT

This Agreement, made and entered into this 8th day of August, 1941, by and between the Dress Association of Los Angeles, a non-profit corporation, acting for and in behalf of itself and each of its members who shall ratify and approve this Con-

(Testimony of George Wishnak.)

Respondent's Exhibit No. 6—(Continued)

tract, in writing, Parties of the First Part, said Party hereinafter to be referred to as the "Association," and the International Ladies' Garment Workers' Union, and the Joint Board of the City of Los Angeles, State of California, composed of Locals 96, 97, 84 and 65, acting for and in behalf of all the members of said locals who are affiliated with the said International Ladies' Garment Workers' Union, hereinafter, collectively referred to as the "Union," Parties of the Second Part;

Now, Therefore, in consideration of the mutual obligations imposed and the mutual benefits derived therefrom, it is hereby covenanted and mutually agreed between the parties hereto, as follows:

PREAMBLE

The basic purposes of this Agreement are:

First: To obtain through mutual cooperation between the parties hereto the greatest possible yearly employment and earnings under the best possible working conditions.

Second: To assist each other in every fair and constructive way to further the prosperity of the Industry through mutual efforts towards increasing the annual output of the Union Firms.

Third: To provide methods for the fair and peaceful adjustment of all disputes which may arise between the parties hereto and their members.

Fourth: To secure the uninterrupted and gen-

(Testimony of George Wishnak.)

Respondent's Exhibit No. 6—(Continued)

eral stabilization of the industry. The Union further understands the necessity of and agrees to maintain continued organization efforts with a view of bringing under this agreement all Silk and Wool Dress Manufacturing plants in the Los Angeles area who are competing with, but are not working under the fair conditions herein stipulated.

Fifth: All parties hereto agree that these fundamental purposes shall serve as guiding influences in the settlement of all prices, problems, disputes, grievances and differences between them or through the Impartial Chairman during the life of this Contract, the provisions whereof are hereinafter set forth.

Sixth: This agreement and all wage increases, benefits, requirements and mutual responsibilities hereinafter set forth are to accrue to and be an obligation of the parties hereto from and including July 1, 1941, as their respective interests may appear.

TERMS

1. Union Membership. All workers employed by members of the Association who are members of the Union, or who hereafter join the Union, shall, as a condition precedent to their employment, remain members in good standing, in said Union; those workers now employed who are not now members of the Union, shall become members of the Union as a condition precedent to further employment.

(Testimony of George Wishnak.)

Respondent's Exhibit No. 6—(Continued)

2. All persons hereafter employed by members of the Association shall, as a condition of their employment, become members of the Union within two (2) weeks, ten (10) full working days, from and after the date of the commencement of their employment.

2A. Should the Dress Association of Los Angeles or any of its members, who have signed this contract, be sued because of their compliance with provisions One (1) and Two (2) hereof, the International Ladies' Garment Workers' Union, at its own expense, agrees to provide Counsel and the necessary Court fees of such litigation.

3. Employment Bureau. An employment bureau is to be established by the Union and all placements and replacements shall be made through such Bureau. If, however, such Bureau shall be unable to supply Union workers within twenty-four (24) hours as may be required, the employer or employers shall have the right to employ any workers they may find, but such persons so employed shall at the expiration of two (2) work weeks, or ten (10) working days, become members in good standing of the Union as a condition of employment. Said employment bureau shall operate fairly and without discrimination with respect to members of the Association.

4. Working Hours and Overtime. All week workers and piece workers covered by this Agreement, are to work not more than seven (7) hours

(Testimony of George Wishnak.)

Respondent's Exhibit No. 6—(Continued)

in any one (1) days, nor more than thirty-five (35) hours in any one (1) week, on a five (5) day week basis, from Monday to Friday, both inclusive; that the hourly wage rate for overtime pay for week workers shall be time and one-half ($1\frac{1}{2}$). All requests to work overtime must be made by the employer to the Association; the Association must arrange such overtime with the Union. Emergency overtime requests must be made at least three (3) hours prior to the time such overtime is needed in order to establish the merit of such emergency request.

4A. All overtime requests for extended periods must be made at least forty-eight (48) hours prior to the time such overtime work is needed; upon investigation by the Union and the Association, such overtime may be granted. Should there be a disagreement between the Union and the Association over the working of overtime, the matter shall be referred to the Impartial Chairman for settlement.

4B. All overtime work shall not exceed five (5) hours per week per worker and no more than one (1) hour per day per worker. It is the standing policy of the Industry to avoid Saturday work, and only in extraordinary cases may Saturday work be granted. With this understanding, the past market policy in this regard will be continued. However, a committee of two (2) members of the Union, unaccompanied by any representatives of the Association, shall be permitted to visit the shops of mem-

(Testimony of George Wishnak.)

Respondent's Exhibit No. 6—(Continued)

bers of the Association, wherever located, before and after regular working hours of any day and on Saturdays, Sundays and Holidays, if the shop is open, or if any person is on the premises, for the purpose of ascertaining whether the hour and work-day provisions of this agreement are being fully complied with.

5. Daily Working Schedule: A definite starting and closing time shall be agreed upon by the workers of the shop, and the employer; such hours of work shall be posted in a prominent place in each factory. Copies of such posted notices shall be mailed to both the Union and the Association; there shall be no change in such starting and closing time without the joint agreement of the employer and the Union acting on behalf of the workers in each shop.

5A. It is also agreed that each employee shall receive one (1) hour for lunch; if, however, the majority of the employees of a given shop elect to reduce their lunch period to not less than forty-five (45) minutes, they shall be so permitted.

6. It is agreed that each employer shall keep an accurate record of the time put in by each worker of his hours of duty.

7. Higher and Lower-Priced Garments. The Association and the Union agree that there is one general class of dresses manufactured by the members of the Association; this general class is designated as the "higher-price dresses;" the phrase

(Testimony of George Wishnak.)

Respondent's Exhibit No. 6—(Continued)

"higher-priced dresses" shall refer to a garment whose sale price is above three dollars and seventy-five cents (\$3.75); the employees in the crafts enumerated below, shall work on a piece work basis; they shall receive a guaranteed minimum wage of not less than the following:

Higher-Priced Dresses

Operators	75 cents per hour
Finishers	55 cents per hour
Pressers	\$1.00 per hour

7A. Underpressers. Hourly wage rates of the Underpressers are to be fixed by mutual agreement with the Pressers in each shop. If they fail to agree, the Union is to decide the percentage of the Pressers' collective wages to be paid to the Underpressers.

7B. All workers enumerated below, shall work by the week and shall receive a guaranteed minimum wage of not less than the following:

Higher-Priced Dresses

Cutters	\$40.00 per week
Sample Makers	\$25.00 per week
Special Machine Operators	\$20.00 per week
Drapers	\$22.00 per week
Examiners	\$18.00 per week
Cleaners and Pinkers.....	\$17.00 per week
Assorters and Floor Girls....	\$17.00 per week

(Testimony of George Wishnak.)

Respondent's Exhibit No. 6—(Continued)

The following general wage increases shall be effective as of July 1, 1941:

1. All cutters to receive a flat increase of three dollars (\$3.00) with this exception, that Cutter pay increases granted between July 1, 1941 and the date of the signing of this agreement shall be credited when computing above increase.

2. Pressers are to receive an increase of ten per cent (10%) with this exception that where advances have been granted, between July 1, 1941 and the date of the signing of this Agreement, on piece rate settlements, same shall be credited when computing above increase.

3. All other crafts are to receive a fifteen percent (15%) increase with this exception that where increases have been granted between July 1, 1941 and the date of the signing of this agreement, same shall be credited in computing above increase.

8. Time Workers. All workers employed as Cutters, Sample Makers, Cleaners, Pinkers, Drapers, Special Machine Operators, Assorters, and Floor Girls, must be employed on the week work basis.

8A. Workers taken from piecework and given day work shall be paid at the rate of their hourly earnings but not less than the stipulated scale.

8B. Apprentices. To enable newcomers to the Industry to obtain full technical knowledge of the Industry and at the same time to provide a measure of security for them during their apprentice-

(Testimony of George Wishnak.)

Respondent's Exhibit No. 6—(Continued)
ship it is recommended that a committee of manufacturers and Union representatives shall be designated to study and recommend the best methods to be adopted by the Industry on this problem.

9. Employers' Work. No more than (1) one member of each employer firm shall be permitted to do any manufacturing work; and he shall work no more than the regular hours stipulated in this agreement. If any members of the firm or foremen shall violate this provision, the firm shall become liable to and pay to the Union a sum equal to the minimum weekly wage scale of such craft for each violation.

10. Piece Rate Settlement and Price Committee. For the purpose of establishing piece work prices on new garments, there shall be a price committee of the various crafts; prices agreed upon shall be reduced to writing and signed by the employer, and said price committee; said price committee shall consist of not more than three (3) persons and the shop chairman or chairlady, where such shop has fifty (50) employees or less; such committee shall consist of not more than four (4) persons and the shop chairman or chairlady, where the shop has more than fifty (50) employees; each shop price committee shall be elected by the workers of each craft in each shop, and election to such price committee shall be held at the regular shop meeting called by the Union.

10A. Notwithstanding the minimums herein set

(Testimony of George Wishnak.)

Respondent's Exhibit No. 6—(Continued)
for piece workers, when, after determination by the Impartial Chairman, it is found that a particular employee is not earning the minimum, then the Impartial Chairman may permit the particular employee to work below the minimum. This provision is applicable only when the Impartial Chairman determines that the employer has fixed fair piece work prices.

11. Duties of Shop Chairman. In each shop there shall be a shop chairman or shop chairlady elected by the workers of each shop, whose function shall be to maintain harmony amongst the employees, and to endeavor to adjust with the employer the complaints of the employees.

11A. To increase harmony and better relationship it is agreed that each employer shall, upon written request of the Union, deduct dues and assessments for the Union from wages due employees each week, and each employer shall pay the same to a designated representative of the Union.

12. No Interruptions During Regular Working Hours. There shall be no shop meetings or cessation of work during regular working hours, and all shop chairmen and shop chairladies shall perform the regular duties of their particular craft.

13. Procedure in Settling Piece Rates. Piece-work prices shall be settled by the price committee and each employer in the Association, in conferences which are to take place outside of the regular working hours of the shop, and at such times as are

(Testimony of George Wishnak.)

Respondent's Exhibit No. 6—(Continued) agreed upon by the committee and the employer; such piece work prices so fixed and agreed upon shall be reduced to writing, and copies of such writing shall be delivered to each party and to the office of the Union and shall be final and binding upon both; whenever piecework prices cannot be agreed upon by the Committee and the employer, such dispute, in the first instance, shall be referred to a representative of the Union and the Association; if such representatives fail to agree, the matter shall be referred within forty-eight (48) hours to the Impartial Chairman who shall have the right to take such evidence and order such tests to be made, procure such data, take *take* such other steps as in his discretion may be necessary in order to reach a just and fair conclusion as to such dispute, and the decision then made by the Impartial Chairman shall be binding upon all parties hereto; pending determination of such dispute, however, all garments shall be put in production with the understanding that the piece work price thereon shall be settled and fixed before the next ensuing pay day; workers shall not be required to make garments if not settled as stipulated above. In case piece workers do not make the minimum for two weeks, prices are to be resettled.

13A. In order to expedite matters in the Impartial Chairman's office, the Union and the Association shall each select three (3) price adjusters whose names shall be submitted to the Impartial Chair-

(Testimony of George Wishnak.)

Respondent's Exhibit No. 6—(Continued)

man's office; the Impartial Chairman's Office shall select one (1) from each list to examine the garments in dispute and submit their price recommendations to the Impartial Chairman; after the Impartial Chairman has received the recommendations he shall then set a price on the garments.

13B. Prices settled on garments shall be understood to mean garments made in lots. This understanding should be considered in compensating for garments produced singly.

13C. For duplicates, pieceworkers shall be paid at their established average hourly piece rate earning or 50% in addition to the settled price at the option of the employer.

14. Equal Division of Work. For the purpose of equal division of work, a slack season shall be defined as a period when in two (2) or more consecutive weeks there is not sufficient work to provide full-time employment for all the workers of the shop; during such slack season whenever there is insufficient work for all the employees in the various crafts, the available work shall be divided equally amongst the employees in each craft having the ability to do the work.

15. Basis of Division of Work. The phrase, "the available work shall be divided equally" used in the foregoing paragraph, shall mean that the work shall be so divided as to cause an equal division of wages for each employee in each specific craft.

(Testimony of George Wishnak.)

Respondent's Exhibit No. 6—(Continued)

16. At Least One-Half Day's Work. Whenever workers are called in for work, they are to be given at least three and one-half ($3\frac{1}{2}$) hours of work, or they are to be compensated on that basis.

17. Sample and Duplicate Makers Selected by Employer. It is further agreed that the employer shall have the right to select such workers as he may elect, to make samples and duplicate; provided, however, that during the slack season hereabove described, the time spent by the worker so selected in making samples and duplicates shall be included in computing the equal division of available work.

18. Damage Done by Worker. The employer shall not charge any worker for any damage done to material during operations on garments. This paragraph in no sense, however, shall protect anyone that causes damage to garments maliciously or wilfully.

19. Trial Period and Discharge of Worker. The employer shall have absolute right to discharge any employee within a period of ten (10) working days from date of beginning of employment. This right shall be absolute and not subject to review. After such trial period no workers shall be discharged for any cause except incompetency, misconduct, soldiering on the job, insubordination in the performance of his duties, and breach of reasonable rules jointly established. The Union, however, shall have the right to review any such discharge before the

(Testimony of George Wishnak.)

Respondent's Exhibit No. 6—(Continued)

Impartial Chairman. All complaints involving discharge shall take precedence over all other complaints and must be adjusted within two (2) working days.

19A. Absence From Work Without Leave. In the event any employee is voluntarily absent from the place of business of any member of the Association for five (5) or more consecutive business days, except as necessitated by proven sickness of such employee, then the employer shall be under no obligation to take back such employee, and the employment shall be deemed terminated, provided however, that if such employee shall give notice of an intention to remain away from the place of business of his employer and obtain the consent of said employer to remain away for a specified period, such absence shall not be deemed a termination of the employment or ground for discharge. No employer upon receiving notice from an employee of an intention to absent himself from the place of business for a specified period, shall refuse to give his consent to such absence for a period of five (5) days or less, unless the employer and the Union shall agree that special circumstances exist which gives the right to the employer to refuse such consent. If any employee shall accept or do work for any person, firm or corporation other than his regular employer, such acceptance or doing of work shall give the employer the right to discharge said employee.

(Testimony of George Wishnak.)

Respondent's Exhibit No. 6—(Continued)

19B. Military or Civilian Service. Workers who volunteer for or are drafted into military or civilian service of the United States of America, shall be deemed to be on a leave of absence and shall be reinstated to their former jobs, provided, they are enjoying reasonably good health, which will enable them to perform their work normally; and providing also, that they apply for their jobs within two (2) months after their discharge from such military or civilian service. However, if the State of California should provide by statute a longer period of time than two (2) months, the time herein specified shall conform to the California statute. Workers who are employed in their places shall be considered temporary workers, unless the firm continues their employment after the workers, in whose place they were employed, return to work. Workers who are to take such temporary jobs shall be so informed by the employer and the Union.

19C. Reorganization. The employer shall be free to reorganize his shop in good faith by giving notice in writing to the Union. It is understood and agreed that a reorganization as contemplated in this agreement means a fundamental change in the mode of operation or curtailment of production as necessitated for financial reasons or a change in personnel required by the making of different class of garments or by the change in the methods of factory operation. In the event such reorganization results in a decrease in personnel the workers who are to

(Testimony of George Wishnak.)

Respondent's Exhibit No. 6—(Continued)

retain their employment shall be chosen by lot. In order that a worker's ability average may be retained, the workers, drawing lots, will be designated into fast, average and slow worker groups according to their past earnings record as shown by the firm's payrolls. Lots will then be drawn by each group separately to determine which workers from each group shall be retained. Reorganization shall only be considered in the beginning or at the end of the season.

20. Legal Holidays. The following legal holidays shall be observed: Decoration Day, July 4th, Labor Day, Thanksgiving Day and Christmas Day. Week workers shall be paid for those holidays if they fall within the working week, workers may also refrain from working on May Day, New Year's Day, and one-half ($\frac{1}{2}$) day on Election Day, but without pay. During any week in which a legal holiday occurs, employees working less than a full week shall be paid pro-rata the hours worked.

21. Religious Holidays. The members of the Dress Association of Los Angeles shall be given the privilege to make up the loss of time for religious holidays, in such manner as decided by the Impartial Chairman, by making arrangements with a joint committee of the Association and the Union preceding the holiday. Such time shall be considered regular time.

22. Fixed Pay Day. Each employer shall estab-

(Testimony of George Wishnak.)

Respondent's Exhibit No. 6—(Continued)

lish a regular weekly pay day which must be not later than the Wednesday following the work week, and all wages must be paid on that day.

23. No Home Work. No home work is to be permitted.

24. No Contractors Inside Shops. It is agreed that all workers employed in the shop of any employer-member of the Association, are to be directly employed by the firm and that no contractors are to be employed in the shop.

25. New Association Members Subject to Union's Acceptance. The Union further agrees not to enter into contractual relation, orally or in writing, with any member who has been suspended, expelled or has resigned from the Association, until such individual, firm, or corporation has made satisfactory settlement with the Association for any legitimate claim it has against it. The Association agrees not to admit any member until any legitimate claim of the Union against him has been satisfactorily settled.

26. Contracts With Non-Association Firms. Contracts made by the Union with employers who are not signatories to this collective agreement shall not extend for a period longer than this agreement and shall be controlled by this exact agreement.

27. Obligations of Firms Who Sign Individual Contracts. The Union shall require all employers who sign this agreement to contribute their proper

(Testimony of George Wishnak.)

Respondent's Exhibit No. 6—(Continued)

share, as established by the Association and the Union, for the maintenance of the collective machinery provided for by this agreement and shall cause all non-member firms, which may sign this contract, to deposit with the Union a security of cash or its acceptable equivalent in an amount which is sufficiently substantial to guarantee future compliance.

28. Private Contracts Between Employer and Employee Prohibited: The Association agrees that its members will not enter into any agreement with their employees, and the Union agrees that its members will likewise not enter into any private agreement with their employers as to wages, hours, and working conditions, nor will such private agreements be sanctioned by either the Union or the Association. However, should the Union or the Association find that a private deal was made by any member of the Union and a member of the Association, both parties shall be brought to trial before their respective organizations, and if found guilty suspended or otherwise dealt with. In no event shall this paragraph be construed to mean that the worker or workers violating this paragraph should be deprived of tenure of employment unless the Union reaches such conclusion upon trial, or upon the decision of the Impartial Chairman in the event the Association desires the discharge of such worker or workers.

29. Work Given to Contractors. If and when

(Testimony of George Wishnak.)

Respondent's Exhibit No. 6—(Continued)
the Union and the Association find it necessary for
the employer to employ a contractor, the follow-
ing conditions are to be observed.

(a) The Contractors shall pay his employees the same prices as are settled for the inside employees.

(b) The chairman of the Contractor's shop shall participate in the settlement of prices of the inside employees.

(c) A fixed overhead shall be added to the fixed prices for the contractor's shop.

(d) All work shall be equally divided in the slow season between the inside shop and the contractor's shop in a percentage proportion to the work previously given the contractor out of the firm's total seasonal production.

(e) Manufacturers shall register all contractors before sending out work.

29A. Responsibility for Wages. Each member of the Association shall be responsible to the members of the Union for the payment of their wages for work done by them on garments of such Association member, made by contractors, provided that such liability shall be limited to wages for one full week and two days in each instance, and provided further that notice of default is given to the Association within three (3) days after such default.

29B. Striking Shops. No member of the Association shall order or purchase garments from any contractor whose workers are on strike, nor shall

(Testimony of George Wishnak.)

Respondent's Exhibit No. 6—(Continued)

any member of the Association make or cause to be made any work for any person against whom the Union has declared a strike, until such strike in each case has been fully settled.

29C. Accessories. Members of the Association who cause to be manufactured covered buttons, pleating and tucking on garments, shall deal only with such firms as are in contractual relations with the Union.

29D. Concerning Provisions 29 and 29C, it is understood and agreed that where compliance works particular hardships such as deliveries, quality requirements, etc., special exemptions may be granted. In such cases the regular impartial machinery procedure must be followed to secure such exemption.

29E. Labels. To effectuate the purpose of this Agreement as set forth in the Preamble, all garments manufactured or distributed by the members of the Association shall bear a label adopted by the Union and shall be attached to each garment. The Association agrees to the principle expressed in this Provision, and it is recommended that within thirty (30) days from the date of the signing of this Agreement, that an Industry Committee, composed equally of Union and Manufacturers' Representatives, under the guidance of the Impartial Chairman, shall be appointed and shall explore the possibilities of adopting this provision as an indus-

(Testimony of George Wishnak.)

Respondent's Exhibit No. 6—(Continued)

try practice; shall set up proper procedure to administer such a provision, and shall recommend such other procedure as in the Committee's judgement, may seem practical.

30. Visitation of Shop by Union Agent. When authorized by the Impartial Chairman, a duly authorized representative of the Union, accompanied by a representative of the Association, shall have access to the factory, to ascertain whether the agreement is lived up to.

31. No Stoppage or Lockout. During the term of this agreement there shall be no general or individual strike, lockout, walkout, shop strikes or shop stoppage.

32. Policy Committee. A policy committee shall be formed comprised of two (2) members of the Union and two (2) members of the Association, and shall have the following duty: To inquire into any exceptional situation that may arise which is not covered by the specific provisions of this contract.

32A. The policy committee shall make written recommendation to the Joint Board of the Union and the Executive Board of the Association, each of which shall pass upon such recommendations of the policy committee; in the event there shall be any disagreement between the Joint Board of the Union and the Executive Board of the Association such disagreement shall be resolved by the Impartial

(Testimony of George Wishnak.)

Respondent's Exhibit No. 6—(Continued)

Chairman whose decision shall be binding upon both parties.

32B. Nothing in this paragraph contained, however, shall be construed to give such policy committee any authority to pass upon any rules, regulations policies, or by-laws of the Union and the Association or to give said policy committee, or the Joint Board of the Union, or the Executive Board of the Association, authority to pass upon any problem which is specifically covered by the terms of this agreement.

33. New Association Members. After the signing of this agreement, before a member shall be admitted to the Association, the Union shall immediately be informed in writing, of the application for membership. If a strike or dispute shall be pending between the applicant and the Union at that time, or if the Union has any reasonable objections to the applicant becoming a member of the Association, the Union shall give the Association, within ten (10) days after the receipt of such notice, a written statement containing full particulars of the matters in dispute and the Association shall not admit such applicant until such dispute is adjusted. No strike shall be called by the Union against the firm applying during the ten (10) days immediately following the said firm's application for membership.

34. Settling Disputes. All complaints and controversies or grievances (except price settlements

(Testimony of George Wishnak.)

Respondent's Exhibit No. 6—(Continued)

which shall be taken up in the manner herein provided for), arising between the parties hereto or between an employer, and any employee hereunder during the life of this agreement, which shall not have been adjusted by the shop chairman or chairlady with the employer, shall be set forth in writing and jointly investigated by the manager of the Association and by the manager of the Union or their deputies. When such representatives shall have arrived at a decision it shall be binding upon the parties hereto. Should such representatives fail to agree, the matter shall be then referred by them to the Impartial Chairman herein provided for. The Impartial Chairman shall have an advisory committee of four (4) members, two (2) of whom shall be elected by the Union, and two (2) by the Association; said advisory committee shall assist at the hearing of all complaints before the Impartial Chairman.

35. Impartial Chairman. Both parties hereto repose full faith and confidence in Anthony G. O'Rourke; said Anthony G. O'Rourke is hereby appointed the Impartial Chairman and final arbiter hereunder; said Impartial Chairman shall serve during the period of this agreement; all complaints, grievances, controversies, disputes, questions of interpretation of this agreement, and all other differences between the parties hereto, shall be heard and determined by the Impartial Chairman, if the same cannot, in the first instance, be otherwise dis-

(Testimony of George Wishnak.)

Respondent's Exhibit No. 6—(Continued)
posed of under the provisions hereof by the parties
hereto.

35A. In the event the said Anthony G. O'Rourke shall for any cause be unable or unwilling to act, then the parties hereto shall choose his successor or successors and said successor and/or successors shall have duties, powers, and rights similar to those conferred upon the said Anthony G. O'Rourke. In the event the parties hereto cannot agree on said successor and/or successors within thirty (30) days, either party may apply to the Mayor of the City of Los Angeles or to the Governor of the State of California, or to the American Arbitration Association for the appointment of said successor and/or successors.

36. Impartial Chairman's Fee. The expense of maintaining the office of an Impartial Chairman and such fees as may be agreed upon to be paid to him shall be paid jointly by both parties hereto. Provided, however, that the fees agreed upon shall in no sense be construed as an agreement to pay him a fixed fee during the life of this contract, but shall be subject to periodic adjustments based upon the financial ability of the contracting parties.

37. Impartial Chairman's Duties. The Impartial Chairman shall also have the right to sit in judgment on the complaints that pieceworkers in any shop are not earning the minimum rates as provided herein. The manufacturers shall submit

(Testimony of George Wishnak.)

Respondent's Exhibit No. 6—(Continued) to the Impartial Chairman's office copies of the complete payrolls each week so that the Impartial Chairman will be informed as to conditions in the different shops. The Impartial Chairman may also consider and determine the complaint of the Association that either the piece-rates in any non-member shop having contractual relations with the Union are too low, or that the minimums in this agreement provided for are not earned by workers in such non-member shops. Upon hearing such complaints he may render any decision he deems fair and just, and his decision shall then supersede any decision on the settling of piece rates.

38. At the request of the Union, the Impartial Chairman, or his deputies shall have the right to examine the books of a firm to establish the facts of complaints that may be made against that particular firm.

39. The Impartial Chairman shall, within seventy-two (72) hours set a date for hearings, notify the parties in any manner deemed necessary by him, and he will for such purpose recognize a representative of the Union, and a representative of the Association, as the parties to whom notice will be sufficient in each case; he shall have the authority to call for any evidence, written or oral. The parties affected may present any evidence, written or oral, but the same shall only be on matters pertinent to the complaint.

40. The Impartial Chairman shall have power

(Testimony of George Wishnak.)

Respondent's Exhibit No. 6—(Continued)

to make and enter any order, ruling, or decree which in his discretion appears to be just and reasonable, and having due regard for justice and equity in each case; such order, ruling or decree shall not, however, be in conflict with the express provisions of this agreement.

41. Discharge and Compensation. With respect to any discharge case which is brought before the Impartial Chairman in which he decides to reinstate the worker, he may, in his discretion, award the worker compensation for loss of time either in part or in full, for the time lost. Should a discharged worker be reinstated through the mediation of the representatives of the Association and the Union and the matter of compensation for loss of time is disputed, it shall be referred to the Impartial Chairman and he may, in his discretion, award the worker compensation as herein provided for.

42. Hearings—New Evidence. If any defense, justification or new matters is to be presented at the hearing, such defense, justification or new matters must be reduced to writing and submitted to the complainant sufficiently in advance of the hearing so as to avoid surprise and enable them to prepare themselves.

42A. Where the complaint appears vague or trifling, the Impartial Chairman may, upon request, or of his own motion, direct that it be made more specific before proceeding.

(Testimony of George Wishnak.)

Respondent's Exhibit No. 6—(Continued)

42B. Hearings—Procedure. All evidence submitted at the hearing must be kept within the definite points raised by the written complaint and reply. No outside matters may be pleaded unless agreed to by all parties.

43. The Impartial Chairman may interpret this agreement but shall have no authority to pass upon any rules, regulations, policies, or by-laws of the Union and the Association, nor authority to alter or modify this agreement or any provisions hereof.

44. Impartial Chairman's Decision Final. The Impartial Chairman's decision shall be deemed and be accepted as final and binding upon all parties affected by such decisions and his decisions shall be carried into effect, respectively, by every person, firm member, employee, local, union or association named, and the failure to carry such decision into effect, shall be deemed a violation of this agreement. Each case brought to the Impartial Chairman shall be considered on its own merits and this agreement shall constitute the basis upon which each decision shall be rendered. No decision shall be used as a precedent for any subsequent case.

44A. The Association and the Union hereby specifically agree for themselves and their members, that the powers now granted to the Impartial Chairman shall be deemed to include, among the other powers herein specifically granted, such other and additional powers as may be granted to arbiters, pursuant to the provisions of Section 1280 and to

(Testimony of George Wishnak.)

Respondent's Exhibit No. 6—(Continued)

1292, inclusive of the Code of Civil Procedure of the State of California. Both parties agree that a judgment of the Superior Court of the State of California, in and for the County of Los Angeles, may be rendered upon any decision or award made by said Impartial Chairman.

45. Modification of Agreement. Modification of this agreement can only be effected at a conference called for such purpose by the parties, and ratified in writing by their respective organizations.

45A. Should the Cost of Living Index for Los Angeles, as maintained by the U. S. Department of Labor Bureau of Labor Statistics, rise five per cent (5%) above the Index for July 15, 1941, the Union may ask for the opening of this agreement to readjust the minimum wage scales herein provided.

46. Expiration of Agreement. This agreement shall remain in force until June 30, 1943; it shall continue thereafter until June 30th of each succeeding year, subject only to the right of either party to this Agreement to then terminate it by giving the other party a notice in writing at least sixty (60) days before such expiration date of their intention to terminate this agreement. Either party may, upon similar notice, during such periods, suggest amendments or reconsideration of terms of the agreement, as a whole, and all such amendments or changes which are mutually agreed upon within said sixty (60) day period shall become effective at the next yearly period.

(Testimony of George Wishnak.)

Respondent's Exhibit No. 6—(Continued)

In Witness Whereof, the parties hereto have caused these presents to be executed by their respective offices and members, and by the members themselves, the day and year first above written.

For: DRESS ASSOCIATION OF
LOS ANGELES

(Signed) MURRAY GOLDSTEIN,
Vice-President

(Signed) J. MARCUS,
Executive Secretary

(Signed) I. TEITELBAUM,
Secretary-Treasurer

For: INTERNATIONAL LADIES'
GARMENT WORKERS'
UNION, JOINT BOARD OF
LOS ANGELES, CALIF.,
LOCALS 96, 97, 84 and 65.

(Signed) LOUIS LEVY

(Signed) GEORGE WISHNAK

(Signed) ETHEL McGEE

(Signed) ROSE HARRINGTON

(Signed) ABE LANKENSON

Trial Examiner Erickson: All exhibits have to be filed in duplicate. I don't need an extra copy for myself.

Q. (By Mr. Shapiro) Whenever the Interna-

(Testimony of George Wishnak.)

tional Ladies' Garment Workers' Union negotiates with employers, or manufacturers in the ladies garment industry in the City of Los Angeles, it does so on behalf of the four locals referred to in this agreement, does it not? That is the cutters, operators, pressers, and cloak operators?

Mr. Nicoson: Object to that as assuming something not in evidence.

The Witness: No, sir.

Mr. Nicoson: There is nothing to show in this exhibit that this represents all the cloak, dress or other manufacturers in the city of Los Angeles.

Mr. Sokol: I have one other technical objection. May I sound it?

Trial Examiner Erickson: Yes.

Mr. Sokol: Simply this: The question was leading. This is his witness now and if he wants to ask him how the [748] union negotiates, that is all right.

Trial Examiner Erickson: I can't say that he is his witness.

Mr. Sokol: He called him.

Trial Examiner Erickson: I will say if he knows the answer to the question, I am going to let him answer it.

The Witness: We negotiated an agreement for any of the workers that ask for an agreement. I personally represent all the workers in any industry, as long as it is needle trades in the ladies garment industry. I have made cloak makers agreements. I have negotiated the knit goods agreement in San

(Testimony of George Wishnak.)

Francisco. I have signed agreements in Seattle, Washington, and in other places.

However, any local has a right to come to me and say, "We want you to go and negotiate an agreement for our members."

Q. (By Mr. Shapiro) All right, you have answered my question. Now, who—

Mr. Sokol: That is for members of the local?

The Witness: Members of a local union.

Q. (By Mr. Shapiro) Who are the members of the Dress Association of Los Angeles?

A. The manufacturers—

Mr. Nicoson: I object to that.

Mr. Shapiro: Why?

Mr. Nicoson: Excuse me. [749]

Mr. Sokol: The question is as to Lettie Lee members. That is the sole question.

Mr. Nicoson: I withdraw the objection.

Trial Examiner Erickson: All right, proceed.

The Witness: Members—what is the question again?

Q. (By Mr. Shapiro) Who are the members of the Dress Association of Los Angeles?

A. Dress manufacturers who have signed a contract with the union.

Q. How many such dress manufacturers are there? A. How many we have?

Q. Yes, who have signed contracts with the union, and who are members of the Dress Association?

Mr. Nicoson: I object to that.

(Testimony of George Wishnak.)

Trial Examiner Erickson: I will sustain the objection.

Mr. Shapiro: May I state my purpose, your Honor?

Trial Examiner Erickson: Yes; you may.

Mr. Shapiro: My purpose is, I want to show how many manufacturers in the city of Los Angeles are members of the Association.

Trial Examiner Erickson: You mean signatories to that contract?

Mr. Shapiro: This agreement does not provide for signatures of the members of the Association. It is executed by the Association. [750]

Trial Examiner Erickson: What proof do you have as to their connection with that contract?

Mr. Shapiro: That is what I want to establish by this witness. I want to ask him how many members there are of this Dress Association. Let's assume he will say there are ten members, or 20 or 100 who are members of this Association. They are parties to this contract, being members.

Trial Examiner Erickson: I can't follow that. I heard the testimony here the other day about a certain \$5,000 forfeiture agreement that was talked about by certain people.

Mr. Shapiro: This is a signed contract, your Honor.

Trial Examiner Erickson: All right. The signatures will show who are members then.

Mr. Shapiro: Would your Honor care to examine this?

(Testimony of George Wishnak.)

Trial Examiner Erickson: It is in evidence. I admitted it here a little while ago.

Mr. Shapiro: All right. It is in evidence.

Trial Examiner Erickson: Yes.

Mr. Shapiro: Now, I think that it is highly material for the Examiner, and the Board, to know who the Dress Association of Los Angeles is. I don't care about the names of the individuals.

Trial Examiner Erickson: You mean the contract is signed by the Dress Association of Los Angeles?

Mr. Shapiro: Yes. [751]

Trial Examiner Erickson: And you want the witness here to tell who are the members of the Dress Association?

Mr. Shapiro: If he knows, yes.

Trial Examiner Erickson: All right. I will let him answer it.

Mr. Nicoson: That wasn't what he asked him.

Mr. Shapiro: What?

Mr. Nicoson: He asked him to tell with whom he had contracts in Los Angeles.

Trial Examiner Erickson: Let him answer my question. Go ahead.

The Witness: Now, I don't know what the question is.

Q. (By Mr. Shapiro) The question that I think the Examiner asked you was—— A. Yes.

Q. ——who are the members of the Dress Association of Los Angeles?

(Testimony of George Wishnak.)

A. The dress manufacturers and some sports-wear manufacturers.

Q. Do you know how many dress manufacturers are members?

A. I couldn't tell you exactly how many are members of the Dress Association, but I do know that the figure is about 30.

Q. About 30? A. Yes.

Q. That is the approximate total membership of the [752] Association? A. Yes.

Q. Now, in negotiating and signing this agreement between the Dress Association of Los Angeles and its membership, and the International Ladies' Garment Workers' Union, the union through its joint board, acts for and on behalf of Local 96—

Mr. Sokol: The contract speaks for itself.

Trial Examiner Erickson: Let the question be asked first, please.

Mr. Shapiro: Would you read the question as far as I have gone?

(The record was read.)

Q. (By Mr. Shapiro) (Continuing)—97, 84, and 65 being the operators, pressers, cutters, and cloak operators, respectively, did it not?

A. No.

Mr. Shapiro: That is all.

Cross Examination

By Mr. Sokol:

Q. With respect to manufacturers, who are not members of the Dress Association, how do you deal with them?

(Testimony of George Wishnak.)

A. We sign individual agreements.

Q. Does the Cutters Local itself sign the agreements? A. Yes. [753]

Q. For the cutters only? A. Yes.

Q. With respect to Mr. Bothman, do you know if he has ever been a member of the Dress Association? A. No, sir.

Mr. Shapiro: It is stipulated he is not and has not been.

Mr. Sokol: Yes; and also he has refused to sign any union contracts. Will you stipulate to that?

Mr. Shapiro: I won't.

Mr. Sokol: Will you stipulate to that contract that he executed some time ago?

Mr. Shapiro: I will stipulate to nothing except what I have just stipulated to. I am not stipulating to every issue in this lawsuit.

Mr. Sokol: Very good.

The Witness: May I make a statement?

Q. (By Mr. Sokol) With respect to the negotiations? A. Yes.

Q. I think you are free to do that. May he, Mr. Examiner?

Trial Examiner Erickson: Yes, he may.

The Witness: When we negotiate an agreement with a manufacturer, we usually try to get him to negotiate for all the workers in the factory, if possible. If, however, one of the locals organizes a majority of that unit in the plant, we negotiate an agreement for that particular unit, [754] which has enlisted the majority of the members in the plant.

(Testimony of George Wishnak.)

Mr. Shapiro: Are you through, Mr. Sokol?

Mr. Sokol: Yes.

Mr. Shapiro: Do you have any questions, Mr. Nicoson?

Mr. Nicoson: No questions.

Redirect Examination

By Mr. Shapiro:

Q. Did I understand you correctly, Mr. Wishnak, to state that those manufacturers, or employers, who are not members of the Association, you deal with individually? A. Yes.

Q. For any particular local?

A. Craft, yes.

Q. You are positive of that? A. Yes.

Q. Is there anything in this agreement that covers the right of the union to execute separate contracts with employer manufacturers, not members of the Association?

Mr. Nicoson: I object to that. The contract is the best evidence.

Mr. Shapiro: I want to know how much he knows about it.

Trial Examiner Erickson: Yes. I haven't had time to read that contract.

Mr. Nicoson: I don't really know what is in there.

Mr. Shapiro: It is right there before you. [755]

Mr. Nicoson: Well, you confront a man here with a 20-page document and ask him the technical details of it. Manifestly, that is unfair.

(Testimony of George Wishnak.)

Trial Examiner Erickson: Will you please give it to Mr. Wishnak?

Mr. Shapiro: Yes. Of course, you showed Mr. Bothman a transcript of the Senate Investigation Proceedings, and expected him to be able to answer your questions.

The Witness: Well, I wouldn't deny what I know without reading.

Q. (By Mr. Shapiro) What do you know without reading?

A. There is such a clause.

Q. I will direct your attention to paragraph 26 of the contract, reading as follows——

Mr. Sokol: Just a minute. Does your Honor want the record filled with quotations?

Trial Examiner Erickson: Sure.

Mr. Sokol: Well, I would like the equal opportunity.

Trial Examiner Erickson: Did you want to make an objection?

Mr. Sokol: Well, it was simply not to take up the record with the quotations.

Mr. Shapiro: It is three lines long.

Trial Examiner Erickson: Go ahead.

Q. (By Mr. Shapiro) "Contracts made by the Union, with [756] employers who are not signatory to this collective agreement, shall not extend for a period longer than this agreement, and shall be controlled by this exact agreement." Is that the provision in the contract that you refer to?

(Testimony of George Wishnak.)

A. Yes. But this provision has been made eight years ago.

Q. Now, just a minute.

A. I want to explain.

Q. What is the date of this contract?

Mr. Sokol: Pardon me. Mr. Examiner, in the first place, the respondent can't hide behind that contract for its unfair labor practices. I mean, why argue about the matter?

Mr. Shapiro: There is more in this case than the alleged unfair labor practices.

Trial Examiner Erickson: The objection is overruled. Go ahead.

Q. (By Mr. Shapiro) What is the date of this contract, Mr. Wishnak?

A. You can read it.

Q. Yes. It is the 8th of August, 1941?

A. That is right.

Q. So what did you mean by your statement that that provision is eight years old?

A. Well, I will agree with you sooner than your witness will agree with my lawyer.

Q. And you agree with me that this is the contract, as it [757] existed, and that the contract was as of August 8, 1941?

A. Yes. I simply wanted to explain this clause to you.

Trial Examiner Erickson: I want all parties to know that the history of bargaining is one of the most important features.

Mr. Sokol: There hasn't been any history of

(Testimony of George Wishnak.)

bargaining with this respondent. That is the point I want to make. Why should the issue be beclouded by a lot of facts, which is beclouding the whole issue, as far as I am concerned.

Trial Examiner Erickson: The question of what happened in the industry is as important in the determination of a unit, as what happens in the particular plant. And I am sure that you have argued that many times before the Board.

Mr. Sokol: Yes, but specifically, the history of bargaining at this plant is important. The salient feature is that this company has dealt with the cutters, the men cutters alone.

Trial Examiner Erickson: Yes. And a man has a right to make up his mind by the history of bargaining in the industry, as to what he should do in his own particular business.

Mr. Sokol: That is assuming he joins with the rest of the industry.

Trial Examiner Erickson: It doesn't make any difference to me whether he does or not. I am here listening to the facts in this case, and I think I was frank to you and to [758] Mr. Shapiro this morning when I told both of you that we had a unit here that was a hard question to solve. And the only way it can be solved is to get all of the facts; and if what happens in other parts of the industry enlightens me in the determination of the unit in this case, I want those facts.

Mr. Sokol: I didn't object to the exhibit going in. That is not the point.

(Testimony of George Wishnak.)

Trial Examiner Erickson: Proceed then.

Recross Examination

By Mr. Nicoson:

Q. Mr. Wishnak, will you consult that exhibit that has just been introduced here, which is Respondent's Exhibit 6, and state if there is anything in there which prohibits you from entering into an independent contract with a dress manufacturer in Los Angeles, who is not a member of this Association?

A. Certainly not.

Mr. Nicoson: That is all. Thank you very much.

Redirect Examination

By Mr. Shapiro:

Q. Is there any provision in that contract which permits you to enter into an agreement with a manufacturer, who is not a member of the Association, on terms other than and different than the terms of this agreement?

A. This only has to do with the scale of wages and conditions provided in this agreement.

Q. That is your conclusion, isn't it? [759]

A. These are the facts.

Mr. Nicoson: You can't impeach your own witness.

Mr. Shapiro: I am not bound by what he says and neither is the Board.

Q. (By Mr. Shapiro) That is your conclusion of what the language of paragraph 26 means; isn't it?

A. No. This is a fact, not a conclusion.

(Testimony of George Wishnak.)

Q. In your mind?

A. No, in everybody's mind. If you will ask the manager of the Association, he will tell you the same thing.

Mr. Shapiro: All right. I guess that is what the Board is here to find anyway.

Q. (By Trial Examiner Erickson) Mr. Wishnak. A. Yes.

Q. Whether these boys who are named in the complaint, joined the union prior to July 21st, they all of them signed cards? A. Yes.

Q. On July 21st? A. Yes.

Q. Now, prior to that time, your union had in mind that you were going to strike the garment markers industry; is that right? A. Yes.

Q. What part did these six boys, or we will call them the cutters of Lettie Lee, Inc., have in the determination of your decision to call a strike, which, as I understand it, was a [760] secret date?

A. This is not a question that can be answered yes or no. If you will permit me to tell you how this came about.

Trial Examiner Erickson: Read the question, please, and you may answer it as you like.

(The question was read.)

The Witness: The fact that they have agreed that they will abide by the decision of the union about six weeks before they signed the cards; and then when it was reported that they already have signed cards, so we decided to call them out on strike.

(Testimony of George Wishnak.)

Q. (By Trial Examiner Erickson) Now, there is testimony here that shortly before the strike, three union agents met with a man by the name of Swartz.

My recollection—and I stand corrected if I am wrong—that is the first indication to Lettie Lee, Inc., that the union was being talked of in the plant. Now, before you answer that I am going to ask that all of the parties either say "yes" or "no"

The Witness: I think I can best answer that.

Mr. Nicoson: I don't agree with that evidence.

Mr. Shapiro: I do. I remember it very distinctly.

Trial Examiner Erickson: Now, what is your remembrance, Mr. Nicoson?

Mr. Nicoson: I understood that Mr. Bothman testified [761] he talked about the union amongst his employees for two or three months before the strike.

Trial Examiner Erickson: I mean real organizational activity.

Mr. Nicoson: You mean a definite knowledge to any officer of the company that there were some people signed up with the union?

Trial Examiner Erickson: That is if the cutters had decided to organize.

Mr. Nicoson: I think that is what the evidence shows.

Trial Examiner Erickson: All right.

The Witness: We started the organization campaign of the dressmakers in Los Angeles, and in

(Testimony of George Wishnak.)

that particular building, that is 719 South Los Angeles, as early as January. We had committees visiting the houses of the workers, talking to them about the union, and also talking to them about the preparation either—for either a settlement, or for a strike in case they will not agree to settlement with the organization.

Q. (By Trial Examiner Erickson) Now, we all know what this 719 building is.

A. Will you permit me to add one word?

Q. We are concerned with one particular company engaged here.

A. In addition to that, every day in the week, or rather [762] once or twice a week, we had special circulars; once a week we had a special newspaper printed, pointing out the firms that are employing non-union help, and talking to the workers' organization, and these newspapers and the leaflets were distributed in the halls of the building almost every day in the week.

And in addition to that, one of their group—rather three of their group consulted with me six weeks before the strike took place. One of them was—

Mr. Shapiro: I don't think we are concerned with what other non-union manufacturers consulted with him.

Trial Examiner Erickson: Yes. Your objection is sustained.

Q. (By Trial Examiner Erickson) My question is: What part did Lettie Lee's employees have

(Testimony of George Wishnak.)

in the decision to call a strike on the 24th of July?

A. Because before that they signed the cards. When it was reported to us that the workers, the cutters had agreed to enforce their demands, we told our representative that unless the cards are signed, we are not going to call them a strike. However, when they did sign, we decided to call them on strike if the firm will not agree to bargain with the union.

Q. I think you testified the other day, Monday I think, that you had previously contacted Lettie Lee? [763] A. Yes.

Q. And asked them to accept certain demands?

A. Yes.

Trial Examiner Erickson: All right. That is all.

Q. (By Mr. Shapiro) I would like to ask you a question, Mr. Wishnak. A. Yes.

Q. These cards were signed on July 21, 1941; is that right?

A. I suppose so, according to the record.

Q. The evidence shows that? A. Yes.

Q. The union had no signed authority from any of these six boys prior to July 21st, did it?

Mr. Nicoson: I object to that. The contrary is shown that they did have.

Trial Examiner Erickson: Well, except for two, yes, you are right.

Mr. Nicoson: All right.

Trial Examiner Erickson: With that qualification, he can answer the question.

(Testimony of George Wishnak.)

The Witness: We had a verbal assurance, but we refused to call any strike until they signed the cards.

Q. (By Mr. Shapiro) And they signed the cards, all of them, on July 21st; is that right?

A. I suppose. They did not sign them in front of me, so I [764] couldn't tell you.

Q. Now, there was a secret committee, whose function it was to determine the exact date, hour, and minute, that the strike was to be called; is that right?

A. There was no secret committee, but there was a committee.

Q. A committee?

A. To determine the date and the hour of the strike.

Q. You were on that committee, weren't you?

A. Yes.

Q. Were any of these boys on that committee?

A. No, sir.

Q. Were they present at any meeting between July 21st, and midnight of July 23rd, when it was decided that the strike would be called on the 24th?

Mr. Nicoson: Objected to as improper direct examination. He had an opportunity to cross examine this witness the other day.

Trial Examiner Erickson: I am surprised that you make that kind of an objection. It is overruled.

Mr. Sokol: Even without that, these employees

(Testimony of George Wishnak.)

don't necessarily have to be on a committee, when they are represented by a bargaining committee.

Trial Examiner Erickson: The objection is overruled.

Will you read the question, Mr. Reporter?

(The question was read.) [765]

Q. (By Mr. Shapiro) Answer the question, "yes" or "no", please.

A. I cannot answer this yes or no, even if directed by the Court, because I will be lying to myself.

Q. Did you discuss with any of these boys whether or not they were in favor of having the strike called on July 24th?

A. Not unless I be permitted to explain my answer, then I will tell you what I did.

Trial Examiner Erickson: You may.

Q. (By Mr. Shapiro) First answer it yes or no.

Trial Examiner Erickson: No; go ahead.

The Witness: The strike committee was divided into representatives of the different locals, and when the local representative came and said that he had so many people qualified, or signed up to go out on a strike, or to enforce demands for bargaining, we took his word for it and we, as the leaders of the strike, did not consult with each worker individually.

Trial Examiner Erickson: We will recess for ten minutes.

(A short recess was taken.) [766]

(Testimony of George Wishnak.)

Trial Examiner Erickson: The proceedings will come to order.

Mr. Shapiro: Mr. Reporter, could you have this photostated and bill us direct. Have your photostater send us the bill and we will pay it. This is Respondent's Exhibit No. 6. You might as well have an extra copy made.

Mr. Nicoson, will you stipulate that the photostatic copies of that agreement may be offered and received in evidence in lieu of the exhibit now marked and in evidence?

Mr. Sokol: So stipulated.

Mr. Nicoson: So stipulated.

Mr. Shapiro: And that this may be withdrawn when the photostats are filed?

Mr. Nicoson: So stipulated.

Mr. Sokol: Yes.

I have a question of Mr. Wishnak.

Recross Examination

Q. (By Mr. Sokol) Mr. Wishnak, I show you page 19347 of Vol. 52 of the Senate Civil Liberties Report, and what purports to have been the members of the Southern California Garment Manufacturers Association, to-wit, Davidson & Studder, Globe Dress Co., Hunt Broughton—

Mr. Shapiro: Just before you read that into the record, I am going to object to counsel reading from this document into the record, unless he establishes a foundation for it. [767]

Trial Examiner Erickson: He has a right to ask the question. He may ask it.

(Testimony of George Wishnak.)

Q. (By Mr. Sokol) (Continuing) — Hunt Broughton & Hunt, Letty Lee, Marjorie Montgomery, William Markowitz, Queen Dress, Mildred Sergeant, and Violet Tatum. Now, I ask you: if any of those concerns ever negotiated with the union since 1936? A. No.

Mr. Shapiro: I will move to strike all of that. I will withdraw the objection.

Mr. Sokol: I will connect it all up. That is all from this witness.

(Witness excused.)

Mr. Sokol: Mr. Bothman, will you resume the stand?

SAM BOTHMAN,

recalled as a witness by and on behalf of the Respondent, having been previously duly sworn, was examined and testified further as follows:

Cross Examination

Q. (By Mr. Sokol) Mr. Bothman, if I tell you that the Senate Civil Liberties report shows that Mr. Nelson Wolfe testified that seven of the members of the Southern California Garment Manufacturers Association signed the agreement providing for penalty of \$5000 if any of them recognized a union, would that refresh your memory as to [768] whether or not you signed the agreement? A. It would not.

Q. It would not? A. No.

(Testimony of Sam Bothman.)

Q. Now, will you tell the Examiner who the members of that Association are?

Mr. Shapiro: I think that has been gone into, your Honor, the other day. It seems to be repetitious to me.

Mr. Sokol: He had no memory of it.

Trial Examiner Erickson: He may answer.

The Witness: Repeat the question.

Trial Examiner Erickson: He wants to know who were the members of the Association so far as you remember.

The Witness: I don't recall.

Q. (By Mr. Sokol) Now, I show you page 19347 of Senate Civil Liberties Report, Vol. 52, and show you what purports to be the list of members; and ask you if that refreshes your memory. Will you look at it, please?

A. I am looking at it.

Q. Now, can you remember any of the members?

A. I don't recall definitely any of these members belonging to any association.

Q. Not a single one?

A. Not definitely belonging to any particular association.

Q. I said the Southern California Garment Manufacturers [769] Association, Inc. I thought you were chairman or president or something like that.

A. That was about five or six years ago, and

(Testimony of Sam Bothman.)

those things are very vague in my mind, and I don't recall hardly anything about that at all.

Q. You just don't remember a thing?

A. That is right.

Q. Let's try to help you further, to jog your memory I show you pages 23346, 23347 of Senate Civil Liberties Report, Vol. 64, relating to the actual minutes of the Southern California Garment Manufacturers, Inc., and which you allegedly were present, according to the minutes. Now, will that help you? Will you read those?

A. No, this entire thing is very vague in my mind.

Q. It is just absolutely a vacuum, isn't it? You can't remember a thing about it?

A. It has been five or six years ago and I don't recall any of the—

Trial Examiner Erickson: Mr. Sokol, to shorten this—

Mr. Sokol: I will.

Trial Examiner Erickson: —is there anybody that you know of who can testify in the absence of the memory of this witness, as to the facts or the assertions that you make with regard to this \$5,000 forfeiture agreement?

Mr. Sokol: Yes. I told Board's attorney some time [770] ago concerning Mr. Wolfe.

Trial Examiner Erickson: Well, now, if you have anybody who can supply the memory of this particular witness—

Mr. Sokol: Well, after all—

(Testimony of Sam Bothman.)

Trial Examiner Erickson: —I will be very glad to keep the hearing open and issue any papers that are required to get the facts before the Board.

Mr. Sokol: All right. I will consult with the Board's attorney on that, whether or not we want to subpoena Mr. Wolfe.

Trial Examiner Erickson: This witness has definitely disclaimed any knowledge of, or memory, I mean to say, of any of the transactions that you offer—

Mr. Sokol: I agree with you.

Trial Examiner Erickson: —to show have been done:

Mr. Sokol: One of the salient reasons for my going into this is to show his memory of other events too, his credibility.

Trial Examiner Erickson: That is all right, but don't you suppose that it might be better to produce a witness who could testify as to the facts, if they are facts?

Mr. Sokol: I can assure you, your Honor, that I have consulted with Board's counsel on that, and have given him the names of the parties some time ago. [771]

Mr. Shapiro: Why aren't they here, Mr. Sokol?

Mr. Sokol: I don't have the power of subpoena. That is the Board's power, prior to the hearing.

Trial Examiner Erickson: No, no, just remember that you have the same rights, that the Board has, as a party in this case, if you are timely and observe the rules of the Board. I don't want you

(Testimony of Sam Bothman.)

to give the impression to Mr. Shapiro, or anybody else, that you don't have the same rights that Mr. Nicoson or Mr. Ryan has in the prosecution of this case.

Q. (By Mr. Sokol) Now, may I go into this?

Mr. Bothman, you testified that you did discuss Paragraph I, shown on page 19353 of Senate Civil Liberties Report, Vol. 52; is that right?

Mr. Shapiro: If your Honor please, might it be understood that I have the same running objection to this line of questioning at this time that the court allowed me two or three days ago?

Trial Examiner Erickson: Yes.

Mr. Shapiro: And may I make the further objection to this questioning at this time on the ground that it is not cross examination. None of this was developed on my examination. It is repetitious.

Trial Examiner Erickson: I will overrule your objection for the time being, to see what Mr. Sokol is [772] going after.

Q. (By Mr. Sokol) If I am incorrect, you correct me. Did you discuss Paragraph 3 of the agreement?

A. As I stated the day before, those things are very vague in my mind.

Q. But at that time, the day before, you read this agreement and said you did discuss it. Are you changing your testimony?

A. I said that the entire operations are very

(Testimony of Sam Bothman.)

vague in my mind and I don't recall the things, as they happened, as you say they did.

Q. Now, if that is so vague, do you remember testifying the other day that you did discuss Paragraph I. Do you remember that?

A. I remember saying that I might have discussed that, or that I did discuss it, but I also qualified it by saying that it is very vague and I can't tell you any of the exact things that happened at that particular period.

Q. You didn't discuss the question of recognition of the unions? A. I don't recall that.

Q. You said that the association was formed as an employment agency?

A. That part is also very vague in my mind.

Q. That also is vague? [773]

A. Yes, that is right.

Q. Everything is vague?

A. The association, as you put it, was very vague.

Q. I will show you here—maybe this will jog your memory—page 19347 of the Senate Civil Liberties Report, Vol. 52, as follows, referring to the purpose of the organization: "Absorbing help to avoid union contact." Do you remember that?

A. I know nothing about the Senate Civil Liberties Report. The first I heard of it was when you put this before me.

Q. These are notes of your organization. Will you read those notes?

(Testimony of Sam Bothman.)

A. However, I know nothing about this report, as I have never seen this.

Q. You refuse to even look at it?

A. No, I will look.

Q. You don't want your memory jogged. Do you want to assist the Court at this time?

A. These things are all so vague in my mind that I would not say I remember anything about it.

Q. You stated on cross examination, by myself, that you talked to your employees throughout the year 1941 about unions. Did you discuss it with them in 1940?

A. I can't recall definitely that I did or that I didn't.

Q. Can you remember this: when did you first learn of [774] Mr. Sardo's felony conviction?

A. Mr. Sardo's felony conviction?

Q. Yes.

A. I think it was about a week or so after the strike was called in 1941.

Q. Was it two weeks, three weeks, four weeks?

A. No; I think it was about a week.

Q. Now, how did you learn that?

A. One of the officers, who was in charge of the officers in our division, told me that one morning.

Q. What was his name?

A. I don't recall his name. One of the officers downstairs.

Q. He came up to you and told you?

A. No, downstairs he told me in the lobby.

(Testimony of Sam Bothman.)

Q. You don't remember his name or his rank?

A. No; I can't recall his name.

Q. Or his rank? A. No.

Q. Was he plain clothes or uniformed?

A. Uniform, I think. Tucker, I think his name was. I am almost sure his name was Tucker.

Q. Are you positive of that?

A. No. I think his name was Tucker, but I am not sure of that. [775]

Q. Then you don't know whether he would back you up or not?

A. I haven't the least idea.

Mr. Shapiro: Now, counsel, I am going to ask—

Mr. Sokol: I want to get the name of the party and I will produce him.

Mr. Shapiro: He gave you the name. Subpoena Tucker and we will find out if he backs him up.

Mr. Sokol: That is another fishing expedition, according to his memory.

Q. (By Mr. Sokol) Well, now, you met in June of 1941 with your men cutters, did you or didn't you? Maybe I am mistaken about that, since you have resumed the stand.

A. I met with my men cutters one evening, whether it was in June or July, I am not so sure, but I met with them one evening previous to the strike. In fact, I met with them two evenings previous to the strike.

Q. Are you sure it was before the strike?

(Testimony of Sam Bothman.)

A. That is right.

Q. Have you ever negotiated with any of your other departments? A. In what manner?

Q. Have you ever—

A. In what manner have I negotiated?

Q. By giving a group of employees a blanket increase.

A. Oh, I can't say that I ever have at one time. [776]

Q. Well, you have negotiated with cutters before? You have given them blanket increases, haven't you?

A. No, I can't say that I ever negotiated with them as a group before.

Q. But you are positive you negotiated with them, as a group, on this occasion?

A. This particular time. They called me back and I went back and talked to them, yes.

Q. Why didn't you call in the girls? Let me ask you this, before going into that: Did you give the girls the same raise you gave the men cutters?

Mr. Shapiro: I remember distinctly that all this was gone into yesterday. We are going over the same ground.

Mr. Sokol: Not this question, or I wouldn't be bringing it up again.

Mr. Shapiro: This identical question was asked.

Trial Examiner Erickson: Overruled.

The Witness: Repeat the question, please.

Mr. Sokol: Read the question.

(The question was read.)

(Testimony of Sam Bothman.)

The Witness: I didn't talk to the girls at that particular time. At that particular time the girls never got a raise.

Q. (By Mr. Sokol) How about Mr. Swartz, did you ever discuss, or did you ever talk to him about unions? [777]

A. Before the strike or after the strike?

Q. Oh, let's make it in general, any time at all.

A. Oh, I might have in just an off-hand way, not really to sit down and discuss it.

Q. You do remember that?

A. Not definitely, no. I can't recall other than the last meeting I had with the boys, I said it to all of them in general, I said it to Mr. Swartz; I said it to the six boys that are here, and also to Mr. Litwin who was at that meeting. I asked them all the questions.

Q. Did you ever talk to Swartz personally concerning the membership of the boys in any union? Do you deny that or do you say you did?

A. I might have spoke to him in a general way in reference to the union.

Q. When was that?

A. I don't recall exactly when.

Q. Was that before or after the strike?

A. It might have been before and afterwards. I did discuss it.

Q. The Trial Examiner wants the facts. Did you, or didn't you?

A. I discussed it quite a lot after the strike but

(Testimony of Sam Bothman.)

before the strike I did not go into it on the ground that—

Q. But after the strike you did? [778]

A. Yes.

Q. When was the first time you discussed the Cutters Local with Mr. Swartz? Did you discuss the Cutters Local with him?

A. So far as the Local is concerned?

Q. The Union, I will say, the I. L. G. W. U.

A. No, I never discussed the Cutters Local with Mr. Swartz at any time.

Q. What union did you discuss with him?

A. The union as a whole. I said, for instance, on the morning of the strike, for example—

Q. Yes.

A. —I said to him, "Gee, I am surprised the boys went out."

And he said, "Well, they did."

And I said, "Well, I am surely surprised, but we are going to try to get along the best we can." And that is all.

Q. What about the union. I want the conversations about the union.

A. I can't remember those conversations.

Q. Do you deny that you had any with Swartz?

A. After the strike?

Q. Yes. A. No.

Q. How many did you have with him? [779]

A. I can't recall.

Q. Quite frequently.

(Testimony of Sam Bothman.)

A. During those two or three days we discussed it, yes.

Q. All right. Can you tell us the substance of any particular conversation about the union?

A. Not necessarily, no. I don't recall the exact dates.

Q. Didn't you insure your workers before the strike? A. We did, all of the workers.

Q. How much insurance did you put on them?

A. It was a blanket policy.

Q. A blanket policy?

A. Yes; Health & Accident Policy.

Q. Did you pay for that?

A. The firm paid for it.

Q. When you had this meeting in June, 1941, you say you gave them the alternative of one or two things; isn't that right? A. That is right.

Q. You said, "take it or leave it," is that right?

A. No; have your choice, take whichever you like.

Q. They could have a raise but they couldn't have anything else; is that right?

A. I never mentioned anything else.

Q. You did say that that would be the alternative.

A. No, I said—in fact, it was in a very friendly manner, [780] and I know received in a very friendly manner.

Q. What did you say?

A. I said "You fellows want a raise. Well, I will give you a raise or you can select whether or not if in the event business gets good, and we have

(Testimony of Sam Bothman.)

to put on other men, and instead of giving you time and a half to work extra time, I will have to put on other men. Therefore, you will only have your regular 40 hours a week work."

Q. What raise did you say you would give them?

A. At that particular time?

Q. Yes.

A. I don't recall exactly what raise I said I would give them. I know what raise I did give them, but I don't recall the exact amount that I said I would give them, but I did say that I would give them a raise.

And when we had the second meeting, they asked what the raise would be and I told them. I said that the raise would be 15 cents an hour.

Trial Examiner Erickson: Is there any dispute about that?

Mr. Shapiro: Not that I know of.

Mr. Sokol: That is all. Nothing further.

Q. (By Mr. Nicoson) Just one question: You said that you had a conversation with Mr. Swartz on the day of the strike in which you said to him this, or this in substance: [781] "Gee, I am surprised that the boys went out." Do you remember just testifying to that? A. Yes.

Q. When did you have that conversation with him?

A. Well, it was, I think, early in the morning when I first got there.

Mr. Nicoson: That is all.

The Witness: That is as much as I remember.

(Testimony of Sam Bothman.)

Q. (By Trial Examiner Erickson) I have a confusion in my thought as to what you meant when you said you were surprised. Will you tell me what you meant by that? A. Sir?

Q. Why were you surprised that the boys went out on strike?

A. We seemed to have a very congenial factory. Everyone seemed to be very happy at our place. We never had any squabbles in our factory, and as far as I knew, everybody in our entire organization was very happy with their work, and they were very happy with their positions.

Q. What part of this 15-cent an hour raise did you have in your mind when you said you were surprised; or did you have any part of it in your mind at that time?

A. Pardon me? I didn't get that question.

Trial Examiner Erickson: Read the question.

(The question was read.) [782]

The Witness: You mean at the time of the strike?

Q. (By Trial Examiner Erickson) No; at the time that you said you were surprised that the boys went out on strike.

A. Well, it was six weeks after they had their raise.

Q. That is all right. You were talking with Swartz and you said you were surprised that the boys went out; and I asked you a question now. Are you in position to answer it, or aren't you?

(Testimony of Sam Bothman.)

A. Why was I surprised when the boys went out? Evidently, I am not understanding your question exactly. I am rather confused.

Q. I will ask it again, then.

A. All right.

Q. Did the 15-cent raise that you gave a few days after June 11th have any part in the makeup of the statement that you made to Swartz when he told you the boys went out on strike, and as a reply you said, "I am surprised they went out."

A. No, the raise had nothing to do with the fact that I was surprised that the boys went out, because I was under the impression that everybody in our factory was very happy with their work, and I did not take that particular raise in consideration at all in my surprise, because—pardon me, I will go a little further—because I was under [783] the impression, and I still am under the impression, that hadn't I given the boys the raise at that particular time, that if the business looked like we couldn't afford that kind of a raise, and I would have talked to them in that manner, those same six boys would have stayed there and worked without the raise.

Q. Well, I have in my mind this thought: that one of the things that makes employees happy is the opportunity that the employer gives to make more money, if they deserve it; is that right?

A. That is right; and also a congenial condition in the place. That is taken into consideration somewhat.

Q. Yes.

(Testimony of Sam Bothman.)

A. We didn't have slave driving in our organization. Everyone seemed to be very well satisfied. I mean I didn't get daily complaints. I didn't have people coming to me, that somebody was doing this, and this; everybody seemed to be very happy in our organization.

Q. Do you think these six men, or the seven men that you called together on June 11th, would have been happier on June 14th if you hadn't given them the opportunity of a raise that you promised them on June 11th; that is, either a raise or working overtime?

A. Oh, no. I never promise anyone anything and go back on my promise; and I think the boys knew me well enough. [784]

Q. That isn't the question. Do you suppose these boys would have been less happy on, we will say, June 14th, or July 14th, than they were on June 11th, if they had not been given the alternative or a raise, or overtime pay, by the promise that you gave on July 11th?

A. Certainly, if I hadn't come through there and given them the raise, I think they would have been unhappy. They would have had the right to, if I would offer them something.

Q. That isn't what I am getting at. You say you told Swartz you couldn't understand why these boys went out on strike, because everything was congenial in the plant. A. That is right.

Q. I am asking you now: do you think that the raise that you gave on July 11th, the raise you promised on July 11th and gave a few days later, had

(Testimony of Sam Bothman.)

any part in making up your mind as to why you told Swartz that things were congenial in the plant?

A. No, I don't think that that entered into it at all.

Q. It had no part in it?

A. I don't feel like it had because I was under the impression, and even the day that the boys walked out, I still thought that those six boys, in fact they told me that themselves more than once, that they were very happy working for me. That they at times—in fact, after the [785] strike, I remember very distinctly one or two of the boys making vague remarks that it was more or less Lou Swartz's fault than it was Mr. Bothman's.

Q. Which two boys were they?

A. Well, I say it is very vague in my mind, but I do remember. It seems to me like one of them was Vito.

Mr. Sokol: Let's get that conversation.

Q. (By Trial Examiner Erickson) When was that? You say it was after the strike?

A. Yes, after the strike, on the picket line, because there were conversations going back and forth. I talked to the boys on the picket line and they talked to me. Besides, I don't think there was any enmity between myself and those boys. In fact, I don't think there is a great deal now.

Q. I don't think there is either. I have seen very friendly relations between you and all the boys.

A. I don't think there has been.

(Testimony of Sam Bothman.)

Q. I am asking you now to tell me what that conversation was.

A. I recall one conversation saying that Lou didn't treat somebody right, or something. I mean it is a little vague, your Honor, and I can't tell you exactly. It seems to me like it was Vito that told me. We were talking about it one day just in a rather general conversation. [786]

Q. All right. Now, we have had a lot of testimony here about the unit, and each witness has testified regarding the unit. I mean, Mr. Litwin and Mr. Swartz, and the rest of the boys; do you recall that testimony? A. Yes.

Mr. Shapiro: I don't understand what your Honor refers to.

Q. (By Trial Examiner Erickson) Well, I will particularly speak of the witnesses Litwin and Swartz. They spoke of cutters in certain combinations and meanings; and in my memory, at no time in any of the testimony did either Litwin or Swartz speak of anybody except the men cutters. Do you remember that?

A. I know that they referred to the men cutters, the biggest part of the time, but I don't recall all of the testimony.

Q. I mean, any operation that concerned individuals, except for the description of jobs of certain peoples. For instance, now, they met in the Exchange Cafe, and they were told that preparations were made to come into a certain garage for protection and when the question of wages was dis-

(Testimony of Sam Bothman.)

cussed, there were a certain group who were named; do you remember that testimony?

A. That is right; I do.

Q. I have in mind that with the description of all the [787] job classifications in that enclosure there, you call the cutting room, I am wondering why wasn't Eunice and Miss Richard and the other people told of the protection that Swartz would give by going into a certain door in the garage or meeting in a certain Exchange restaurant, or meeting in a certain portion of the plant after 4:30 in the evening, if they weren't, what I call, maybe specialists, or a particular group of employees that should be treated in a way other than Richard and Eunice and the other girl? Can you give me an answer to that?

A. As far as him telling the boys where to come in, or to come to a garage, I knew nothing about that at all. So far as meeting with the boys in the factory, I met with them and no other girls in the factory did I meet with, just the boys are the only ones I took this matter up with. I never took it up with the girls.

Q. If these girls were cutters, why didn't you bring them in? A. Because I—

Q. I am really very serious. I think this is a very important question.

A. Well, because I handled each individual person according to their own merits, and, incidentally, this is the first time that I had ever been called by a group to talk to a group. [788]

(Testimony of Sam Bothman.)

Q. All right. Did you consider the group as you would an individual?

A. The men were the ones that asked for the conference with me. The girls, evidently, they didn't take the girls into consideration.

Q. That is right. I will agree with you there.

A. The men didn't take the girls in their consideration in the factory, because they didn't call in any of the rest of them.

Q. They don't. I think they testified they are a unit in themselves. A. That is right.

Q. You say that you treat individuals.

A. Yes.

Q. Well, wasn't this group an individual?

A. No, not at this particular meeting. This is the first time that I ever talked to any of the employees in a group.

Q. But you did talk to them as an individual?

A. That is right.

Q. Although there were six there; is that right?

A. I talked how?

Q. You talked to them as an individual?

A. Within the group at that particular meeting, yes, surely. [789]

Q. All right.

A. I talked to everybody that was there at that meeting.

Trial Examiner Erickson: That is all. Anything further?

Mr. Nicoson: No questions.

(Testimony of Sam Bothman.)

Redirect Examination

Q. (By Mr. Shapiro) I have one or two questions.

You were asked to produce certain of your records. Did you produce the records?

A. That payroll record, yes.

Mr. Shapiro: I have it here, Mr. Nicoson, if you want it.

Mr. Nicoson: Yes.

Q. (By Mr. Shapiro) On your cross examination this morning, in response to a question by Mr. Nicoson, which question was as follows—and for the record the reporter has furnished me with this transcript of the two or three questions and answers:

“Q. (By Mr. Nicoson) Well, now, as a matter of fact, Mr. Bothman, it really wasn’t a matter of unit at all, was it? It was a matter that you just wouldn’t bargain with the union under any circumstances; isn’t that correct?

“A. It is definitely a unit.

“Q. That is a plain fact; isn’t it? [790]

“A. Certainly six people out of a factory of 110 certainly don’t represent a unit. It is not a representative body.”

Now, will you state to me what you meant when you answered that question as to whether or not you wouldn’t bargain with the union under any circumstances and that the question of unit wasn’t involved at all?

(Testimony of Sam Bothman.)

Mr. Nicoson: I object to what he meant. The record speaks for itself.

Trial Examiner Erickson: Overruled. You may answer.

Q. (By Mr. Shapiro) I will read the question again, or, if you would like to look at it, you may.

A. I meant that six people did not constitute a majority of a unit of 110 people so, therefore, I did not feel that I should have to bargain with a representative out of such a small group. That is exactly what I meant.

Q. Did you mean by that answer to state that you conceded, or admitted that the cutters were a unit? A. I did not.

Mr. Shapiro: That is all.

Recross Examination

Q. (By Mr. Sokol) Let me take you on that, Mr. Bothman. So you wouldn't bargain with the cutters as a unit; is that right? Is that right, or is it wrong?

A. I said a cutters representative. [791]

Q. Answer my question, please. So you wouldn't bargain with the cutters, as a unit?

A. I didn't say that. I did not say that.

Q. Will you bargain with the cutters as a unit?

A. If the National Labor Relations Board deems it a unit, appropriate for bargaining, that is a different story.

Q. But you do say you would bargain with the representative of all your employees, don't you, without the Labor Board certifying it?

(Testimony of Sam Bothman.)

A. I said what?

Q. Suppose a representative came to you, representing all of the employees, would you bargain with that representative?

A. If they were the authorized agent.

Q. Must they be certified by the Labor Board before you would bargain with them?

A. They must be certified by my people.

Q. I see. Now, when the union wrote to you, long before the strike, and asked you to meet with them, why didn't you meet with the union to find out just who they represented?

A. Because out of 115 people in our employment, over 80 per cent were at work, coming through a picket line, and therefore I concluded that the union was not a lawful representative.

Q. Well, long before the strike the union sent you a letter asking you to meet with the union's representative. [792]

Trial Examiner Erickson: How long, now.

Q. (By Mr. Sokol) Several months, wasn't it?

A. I don't recall the letter at all.

Q. According to the testimony of Mr. Wishnak, a letter was sent requesting a meeting.

Mr. Shapiro: There is nothing in the record other than Mr. Wishnak's testimony. And the only letters in evidence are your letters, Mr. Sokol.

Q. (By Mr. Sokol) I will ask you: did you ever receive any letters from the union requesting you to meet with the union's representative?

A. I don't recall any letters other than those

(Testimony of Sam Bothman.)

that I have brought here and given to Mr. Shapiro.

Q. All right. When I put in my 'phone calls at the beginning, you didn't know how many people the union represented, did you, from my own conversation with your secretary, did you?

A. I don't know what kind of a conversation you had with my secretary.

Q. You have already stated that you received my calls and didn't answer them. Now, do you think that I telephoned—

A. I don't know what kind of conversations you had with my secretary. I am answering your question, Mr. Sokol.

Q. Your secretary, Miss Finkenstein, told me she was making notes of my conversation, I asked her to. Did she [793] give you the information?

A. Not that I remember.

Q. But she did tell you I called?

A. Yes.

Q. All right. Now, you knew I was the union's attorney, didn't you?

A. Frankly speaking, I didn't know who you were. I didn't know who you were at that time, no.

Mr. Sokol: That is enough.

The Witness: I never heard of you before.

Mr. Shapiro: Mr. Bothman, let me have your attention. If a majority of the production employees of Lettie Lee, Inc. indicate their willingness or their desire to affiliate with a union, and that fact is demonstrated to you, and the union,

(Testimony of Sam Bothman.)

or whatever representative it might be, represents 51 per cent, or more, of your payroll, would you be willing to bargain with that representative?

Mr. Nicoson: I object to that.

Trial Examiner Erickson: That is overruled.

The Witness: Certainly.

Mr. Shapiro: That is all.

Mr. Sokol: Do you include the office workers?

Mr. Shapiro: I said production workers.

Mr. Sokol: Along with the employees?

Mr. Shapiro: You can include the office workers if [794] you want to.

Mr. Sokol: All right. I just wanted to have in the record what unit you really claimed was appropriate.

Q. (By Mr. Sokol) Do you claim the office workers should be in the unit too, Mr. Bothman?

A. Production workers.

Q. Should the office workers be in there? Should they have a bargaining representative with the production workers?

A. I don't know what the custom is in our industry, but whatever the custom is in our industry, naturally, I will be more than happy to follow.

Trial Examiner Erickson: The custom seems to be, from the testimony, that cutters are a unit that has been deemed appropriate in your particular line of business. Haven't you heard that from this testimony here?

The Witness: No, I never deemed the cutters as an individual unit.

(Testimony of Sam Bothman.)

Q. (By Trial Examiner Erickson) You mean that you haven't?

A. That is right. Or it isn't the custom in the industry, as a whole, because practically every contract that is signed with the dress people, they have signed it as an entire factory, not any individual unit alone.

Q. I haven't seen this contract that you introduced here a little while ago, but it seems to me the testimony is [795] when cutters are a part of that agreement, they are more or less autonomous in the agreement; is that right, or is it wrong?

Mr. Sokol: Absolutely. He knows that.

Mr. Shapiro: Who testified to that, your Honor?

Trial Examiner Erickson: I am asking the witness.

Mr. Shapiro: I see.

The Witness: No, the cutters are just a part of the factory, like any other part of the factory, just like the operators.

Q. (By Trial Examiner Erickson) Now, I am getting at the question I want to ask you. Where do you get this information?

A. That has been the general practice so far as I know in this locality.

Q. Now, will you tell me one person or one employer who has practiced, what you call, the custom in this locality?

A. Well, I would say—if you will read the contract of the Dress Association—

Q. All right. Let me see it.

(Testimony of Sam Bothman.)

A. —you will find they have a joint bargaining committee.

Q. Have you read this contract?

A. No, I haven't, not completely, but I have heard it discussed at various times, but I haven't read that contract thoroughly. [796]

Trial Examiner Erickson: Well, Mr. Sokol, you are familiar with this contract.

Mr. Sokol: Yes.

Trial Examiner Erickson: Where in this contract are cutters mentioned?

Mr. Shapiro: I know of no place in that contract where it states, expressly, or impliedly, that the cutters are an autonomous unit.

Mr. Sokol: It only provides for the wage for the cutters.

Mr. Shapiro: It provides for the wages of the members of the other crafts. There are four crafts parties to that agreement.

Mr. Sokol: These are the minimum wages, and it provides for a special increase for cutters only. That is on page four, special increase for the cutters only, apart from all the other workers. They got a special increase because their conditions were different and that was especially provided for. I happened to be present when that was negotiated.

Q. (By Trial Examiner Erickson) Is that what you did on July 11th? Isn't that exactly what you did on July 11th? A. On July 11th?

Q. Well—

Mr. Nicoson: June 11th. [797]

(Testimony of Sam Bothman.)

Trial Examiner Erickson: No; July 11th.

Mr. Nicoson: June 13th.

The Witness: Yes, I gave the cutters an increase, if that is what you mean, some of the cutters, not all of them; some of them I gave an increase to.

Q. (By Trial Examiner Erickson) Which cutters didn't you give an increase to?

A. At that particular time I didn't give the girls —the girls didn't get an increase at that particular time.

Mr. Sokol: All the rest of the workers in that agreement got a blanket wage increase in proportion to the cost of living.

Mr. Shapiro: I am going to object to counsel testifying.

Mr. Sokol: You wanted a little explanation of the contract.

Mr. Shapiro: If it is to be considered as evidence, let's take it in the customary way.

Mr. Sokol: That is all.

Mr. Shapiro: May I point out, your Honor, that in line with your query, that there is nothing in this agreement, expressed or implied, which indicates that the cutters are in any sense autonomous, that they are different from any other production employee, except that they receive a different rate of pay.

Now, if you will look through this agreement, and I [798] know your Honor will——

Mr. Sokol: I can explain that. I can be called

to the stand. I was present at the negotiations which the mayor called for that purpose.

Mr. Shapiro: Just a minute. May I finish. If you will look through the agreement, you will find that wage scales are provided.

Mr. Sokol: Now, I object to your testifying. You objected to my characterizing. Now, let's get off the record if we are going to do that. In other words, you can characterize, but when it comes my turn, I can't.

Trial Examiner Erickson: Go ahead. I haven't stopped you.

Mr. Shapiro: The agreement provides for the working hours of all workers in Paragraph 4. There is no special provision made for the working hours of cutters or anything else.

Mr. Sokol: We are not arguing.

Mr. Shapiro: I am going to show that this agreement applies alike to every member of the—

Mr. Sokol: Put on some testimony. Put me on.

Mr. Shapiro: You can't put on any testimony to vary or explain this contract.

Trial Examiner Erickson: Go ahead. Mr. Sokol, let Mr. Shapiro go ahead with his argument. [799]

If you have any refutation, I will give you an opportunity.

Mr. Sokol: I don't think it is the proper time for argument.

Trial Examiner Erickson: Go ahead, Mr. Shapiro.

Mr. Shapiro: The provisions of this agreement

apply alike to every member of each of the four crafts represented by Locals 96, 97, 84 and 65. Those are four production units.

Wage scales are provided in Paragraph 7 (b). And in Paragraph 7 for operators, finishers, and pressers. The operators get 75 cents an hour; the finishers get 55; and the pressers get \$1.00.

In 7 (b), under the higher-priced dresses, the cutters get \$40 a week, sample makers \$25 a week; the special machine operators get \$20 a week; drapers get \$22 a week, examiners \$18 a week; cleaners and pinkers \$17 a week; assorters and floor girls \$17 a week.

Then in the next paragraph, as pointed out by Mr. Sokol, it provides for a flat increase of \$3 a week to cutters. There is nothing in this agreement that singles out the cutters in any respect. It provides for hours, conditions of employment, and compensation of members of each of these particular crafts.

And it expressly states that the agreement is made by [800] the joint Board of the International on behalf of the members of Local 96, 97, 84 and 65. Now, I deem this, your Honor, to be the most important piece of evidence in this case.

Trial Examiner Erickson: It is in the record.

Mr. Shapiro: Yes, I know. This is the most important evidence as to whether or not, regardless of what the industry thinks, or the union thinks, as to what the unit thinks, as to whether or not negotiations should be carried on by the Cutters Local

alone, or by the Cutters Local and the other production locals in the industry as a whole in this community. And this definitely establishes that—

Trial Examiner Erickson: It is in evidence.

Mr. Shapiro: On August 8, 1941, the agreement provides that all of these crafts bargain as one unit, under a joint board, with the manufacturers. It is capable of no other construction.

Mr. Nicoson: I submit that the record shows that is merely Mr. Shapiro's construction of what the contract says. The contract is in evidence and the Board has a right, and so has the Examiner, to make his own construction of the contract.

Trial Examiner Erickson: That is understood. Is there anything further from this witness? [801]

Mr. Shapiro: Nothing further.

Mr. Nicoson: I have nothing further.

Trial Examiner Erickson: At this time I am going to inform the parties that they may, within 30 days after the date—

Mr. Nicoson: Wait a minute. I just said nothing further with this witness.

Trial Examiner Erickson: That is all right. I am making the statement at this time.

Mr. Nicoson: You are not closing the record.

Trial Examiner Erickson: No, no.

(Continuing) —that any party may, within 30 days after the date of the order transferring the case to the Board, pursuant to Section 32 of Article II, file exceptions, and briefs in support thereof, with the Board; and that should any party de-

sire permission to argue orally before the Board, request therefor should be made in writing to the Board within 20 days after the date of the order transferring the case to the Board.

Go ahead, Mr. Nicoson.

Mr. Nicoson: Do I understand that Respondent has rested?

Trial Examiner Erickson: I don't know. I just made that statement.

Mr. Nicoson: I thought you were closing the case. [802] Excuse me.

Trial Examiner Erickson: Oh, no.

Mr. Shapiro: The respondent rests.

Trial Examiner Erickson: We will recess for five minutes.

(A short recess was had.)

Trial Examiner Erickson: The proceedings will come to order.

Mr. Nicoson: At this time, the Board moves to conform the pleadings to the proof, and rests.

Mr. Shapiro: May I make one or two motions?

Trial Examiner Erickson: Is there any objection to that?

Mr. Shapiro: I think not. This is off the record. Is that customary, frankly?

Trial Examiner Erickson: Well, it means that the Board, in case of a mistake in dates or names or spelling—

Mr. Shapiro: There is no objection, your Honor.

Trial Examiner Erickson: It will be granted.

Mr. Shapiro: At this time, if your Honor please, I will move to dismiss the complaint in so far as it proceeds upon the theory that the cutters are the appropriate bargaining unit on the ground that it affirmatively appears, from the evidence, that the cutters are not the appropriate bargaining unit.

[803]

Trial Examiner Erickson: I am going to tell you, Mr. Shapiro, it is going to take a lot of studying; and I am going to defer a ruling on that motion.

Mr. Shapiro: Very well. And I will make the same motion to dismiss upon the ground that it affirmatively appears, from the record, that the union, the alleged representative of the employees, does not represent a majority of the cutters, nor of the employees in the cutting department, or of the production employees of Lettie Lee, the respondent in this case.

Trial Examiner Erickson: I wish I could answer you, but I can't.

Mr. Shapiro: And the ruling is likewise deferred?

Trial Examiner Erickson: Yes.

Mr. Shapiro: At this time I will move the Court to dismiss the complaint in so far as it relates to alleged unfair practices upon the ground that it affirmatively appears, from the evidence in the case, that the respondent has not been guilty of unfair labor practices, as alleged in the complaint, or otherwise.

Trial Examiner Erickson: I can't definitely deny that.

Mr. Shapiro: I have no further motions.

Mr. Nicoson: Just one thing further for the record: there are a couple of pages in this bound volume of the [804] payroll that I would like to make arrangements with the reporter to take out and have photostated and then returned, return the originals, together with the book, to Mr. Bothman.

Trial Examiner Erickson: I think that was granted to you.

Mr. Nicoson: Well, I just wanted it in the record. This reporter wasn't here at the time that permission was granted and I wanted to restate it on the record. It was granted to me at that time.

Trial Examiner Erickson: Yes.

Mr. Shapiro: I have one further motion, if I may make it.

Trial Examiner Erickson: Yes.

Mr. Shapiro: At this time I move to strike from the record all evidence of conversations between any of the witnesses and Louis Swartz, upon the ground that they are hearsay, not binding upon the respondent, upon the ground that no proper foundation has been laid for the admission of such conversations, and no showing has been made that Louis Swartz was in any way authorized or directed or empowered to make any statements, or to do any acts for or on behalf of the respondent.

Trial Examiner Erickson: Mr. Shapiro, to save you time in your brief, I will state definitely, in my

opinion [805] Mr. Swartz has as much right and had the same respect from the employees as Mr. Bothman, or Miss Lee, or anybody else in the concern would have. That is my definite conclusion. So I am going to deny your motion to strike the testimony with regard to Mr. Swartz.

Mr. Shapiro: Very well.

Trial Examiner Erickson: So far as I am concerned, I am going to try and save you as much time as I can, or as much effort as you might wish to make with regard to Swartz in your brief. And I think that during recesses I have said to both you, and Mr. Sokol, that you have presented me with a case that presents a problem of unit that is going to be, as we say, hard to crack. And I can't command, but I will ask that each of you file a brief.

Mr. Sokol: Now, Mr. Examiner, I am willing to file a brief, but I wasn't present at all these sessions, and I don't like to do this, but I think that the Board's counsel should be instructed to file a brief on that also, because I wasn't present at all the sessions and didn't hear all the testimony of some of these witnesses. I will give you a brief on the evidence that I heard.

Mr. Shapiro: Well, I take it, that your Honor is principally concerned with the law, rather than our interpretation of the facts. [806]

Trial Examiner Erickson: No.

Mr. Shapiro: Or rather the law as applied to the facts.

Trial Examiner Erickson: Yes. Let's make it a brief on the law, as applied to the facts, with the facts as applied to the law, whichever you want to call it.

Mr. Shapiro: But I take it that you wish the brief limited to the question of the appropriate unit?

Trial Examiner Erickson: Well, as far as I am concerned, I will be frank to say that that is in my mind the only question there is concerning this case.

Mr. Shapiro: Yes. I stated earlier today that I had respectable authority from various Circuit Courts of the United States, decided very recently, as to the materiality of the fact that an employee, or former employee, has been convicted of a felony. I take it your Honor would want those cases too?

Trial Examiner Erickson: No, I don't care for those.

Mr. Shapiro: Does your Honor feel that in the event a reinstatement order and back pay order should be made—

Trial Examiner Erickson: If it was an issue in the case, I would say it was important, but it is not, in my opinion, an issue in this case. I don't think that Mr. Bothman singled out this particular man, as not being employable, because of a crime he committed in Wisconsin [807] some years ago. I will be frank to say that. In this time of war we might as well be open and above-board in everything that we

think and feel. I will personally say that if I find that Lettie Lee, Inc., has committed unfair labor practices, and that the facts would show that this particular man was an employee, who went out on strike on July 24th because of an unfair labor practice, I wouldn't hesitate one minute to recommend to the Board that he be reinstated with full back pay. Now, I can't be any plainer than that.

Mr. Shapiro: No, your Honor couldn't be any plainer than that. However, with all due regard to your views, I think that under the well settled decisions, many of them recent, that as a matter of law, regardless of our personal feelings or sentiments, and regardless what the employer might have had in mind, that does not enter into it. In one of the latest cases it was found, after the matter had been decided by the Board, that one of the employees had been convicted of a felony, it has been held by the Circuit Court of Appeals that it is error to reorder that man reinstated, and to order him to receive back pay.

Trial Examiner Erickson: You forget, Mr. Shapiro, that it was only a few days after the strike commenced that there were certain people asked to come back, and this particular man was not asked to come back. And if you will [808] examine the record, if you have the record, you will find that it wasn't until January 26th that you had any evidence of the fact.

Mr. Shapiro: Your Honor is mistaken on that.

Trial Examiner Erickson: No; I am not mis-

taken. I mean, anything concrete, except what you were told.

Mr. Shapiro: Yes, that is correct.

Trial Examiner Erickson: I mean any official evidence.

Mr. Shapiro: That is right.

Trial Examiner Erickson: Yes.

Mr. Shapiro: But we had information, according to Mr. Bothman's testimony, he was told by a police officer.

Trial Examiner Erickson: Now, this record isn't closed yet, and I have yet to hear one word, either in your answer or in testimony, that this particular man was not offered reinstatement because he was convicted of a felony. And if you want to put on testimony, I am still here. I am still anxious to hear it. I want all of the facts.

Mr. Shapiro: All right. I will call Mr. Bothman to the stand. My recollection is that he was examined on that point. I will question him again so there will be no mistake about it.

Trial Examiner Erickson: He may be examined.

Mr. Sokol: Before we get to that, will you instruct [809] Board's counsel to prepare a brief also?

Mr. Nicoson: I object to that.

Trial Examiner Erickson: No, it is not required. I think the question is more important to you than it is to anyone else in this proceeding, because you are maintaining a craft that is, I would say, just as distinct as is the Bar Association or a

Medical Association, or any other specialized work that people perform. And I think you are right now—I will say this on the record, and I hope the reporter is taking it—in the position of maintaining something that was quite holy in the industry some years ago, and it may be today, and you put me on a damn hard spot.

SAM BOTHMAN

recalled as a witness by and on behalf of the Respondent, having previously been duly sworn, was examined and testified further as follows:

Direct Examination

By Mr. Shapiro:

Q. Mr. Bothman, why did you not ask Mr. Sardo to come back to work?

Mr. Nicoson: What was that question?

(The question was read.)

The Witness: Because I had heard that he was convicted of a crime of stealing clothes. One of the policemen who had charge of the squad out in front of our building [810] told me one morning, down in the hall, and I think it was a Mr. Tucker. However, I am not sure who this man was.

Trial Examiner Erickson: All right. We have heard that. I am sorry.

Mr. Shapiro: Yes, you have heard that.

Q. (By Mr. Shapiro) If you had not learned, or been advised that Mr. Sardo had been convicted

(Testimony of Sam Bothman.)

of the crime of grand larceny involving the theft of some 20 suits of clothes from his employer, would you have offered him reinstatement and asked him to come back to work?

Mr. Nicoson: I object to that. There is nothing in the evidence that he stole 20 suits of clothes. There is nothing to show that he knew about that at all.

Trial Examiner Erickson: Overruled.

The Witness: I would have asked him to come back like I did the other two boys—other three boys. I had no other reason because his work was good.

Q. (By Mr. Shapiro) Was there any other reason that you did not ask Mr. Sardo to return to work other than the fact that you had learned that he had been convicted of a felony?

A. None that I know of, no.

Q. Since you were advised by a police officer, who you believe was Mr. Tucker, that Mr. Sardo was convicted of a felony, to-wit, grand larceny, has that been confirmed to [811] you by receipt of certified copies of the record?

Mr. Nicoson: I object to that.

Mr. Shapiro: Is it admitted, or isn't it admitted?

Trial Examiner Erickson: I think it was admitted yesterday.

Mr. Nicoson: We admit his conviction, yes.

Mr. Shapiro: That is all.

Mr. Nicoson: No questions.

(Testimony of Sam Bothman.)

Q. (By Trial Examiner Erickson) I have a question as to the other two boys. There were three of them that went off, I think you testified?

A. That is right.

Trial Examiner Erickson: That is all. Anything further?

Mr. Shapiro: The respondent rests.

Trial Examiner Erickson: Anything further for the Board?

Mr. Nicoson: No.

Trial Examiner Erickson: Anything by the Union?

Mr. Sokol: No.

Trial Examiner Erickson: By the Respondent?

Mr. Shapiro: Nothing further.

Mr. Sokol: Briefs are sent to you in care of the Trial Examiner, the Chief Trial Examiner?

Trial Examiner Erickson: Five copies of a brief will [812] be expected by me from the Union and the Respondent within 15 days after the close of the hearing, which is today, and I want you to particularly stress the question of the unit in this case.

Mr. Shapiro: Where is that to be sent or mailed?

Trial Examiner Erickson: Send it to me, in care of the Chief Trial Examiner at Washington, D. C.; that is the Chief Trial Examiner of the National Labor Relations Board, Washington, D. C., within 15 days of today.

Now, if you want to argue, I will be glad to hear it, but I will be frank to say that I paid close atten-

tion to the evidence and I think the briefs will be more helpful than argument. I am not foreclosing the right to argue, if you want to. Do you, Mr. Sokol?

Mr. Sokol: No.

Mr. Shapiro: The respondent waives argument.

Mr. Nicoson: We will waive argument.

Trial Examiner Erickson: Then the hearing is closed.

(Whereupon, at 5:00 o'clock p. m. the hearing in the above-entitled matter was closed.)

[813]

In the United States Circuit Court of Appeals
For the Ninth Circuit

NATIONAL LABOR RELATIONS BOARD,
Petitioner,

vs.

LETTIE LEE, INC.,
Respondent.

CERTIFICATE OF THE NATIONAL LABOR
RELATIONS BOARD

The National Labor Relations Board, by its Chief of the Order Section, duly authorized by Section 1 of Article VI, Rules and Regulations of the National Labor Relations Board—Series 2, as amended, hereby certifies that the documents annexed hereto constitute a full and accurate trans-

script of a proceeding had before said Board entitled, "In the Matter of Lettie Lee, Inc., and International Ladies' Garment Workers' Union, Cutters Local No. 84, A.F.L.," the same being Case No. C-2142 before said Board, such transcript including the pleadings, testimony and evidence upon which the order of the Board in said proceeding was entered, and including also the findings and order of the Board.

Fully enumerated, said documents attached hereto are as follows:

(1) Stenographic transcript of testimony before Gustaf B. Erickson, Trial Examiner for the National Labor Relations Board, on January 19, 20, 26, 27, 28, and 29, 1942, together with all exhibits introduced in evidence.

(2) Copy of the Intermediate Report of Trial Examiner Erickson, dated March 21, 1942.

(3) Copy of order transferring case to the Board, dated March 24, 1942.

(4) Copy of respondent's exceptions to the Intermediate Report.

(5) Copy of decision, findings of fact, conclusions of law, and order issued by the National Labor Relations Board November 9, 1942, together with affidavit of service and United States Post Office return receipts thereof.

In Testimony Whereof the Chief of the Order Section of the National Labor Relations Board, being thereunto duly authorized as aforesaid, has hereunto set his hand and affixed the seal of the National Labor Relations Board in the city of

Washington, District of Columbia, this 1st day of March 1943.

[Seal]

JOHN E. LAWYER

Chief, Order Section, National
Labor Relations Board.

[Endorsed]: No. 10382. United States Circuit Court of Appeals for the Ninth Circuit. National Labor Relations Board, Petitioner, vs. Lettie Lee, Inc., a corporation, Respondent. Transcript of Record. Upon Petition for Enforcement of an Order of the National Labor Relations Board.

Filed March 10, 1943.

PAUL P. O'BRIEN,

Clerk of the United States Circuit Court of Appeals
for the Ninth Circuit.

In the United States Circuit Court of Appeals
For the Ninth Circuit

No. 10382

NATIONAL LABOR RELATIONS BOARD,
Petitioner,

vs.

LETTIE LEE, INC.,

Respondent.

STATEMENT OF POINTS ON WHICH
PETITIONER INTENDS TO RELY

Comes now the National Labor Relations Board, petitioner in the above proceeding, and, in conformity with the revised rules of this Court heretofore adopted, hereby states the following points as those on which it intends to rely in this proceeding:

1. The Board's findings of fact are fully supported by substantial evidence. Upon the facts so found, respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8 (1), (3) and (5) of the Act.

2. The Board's order is wholly valid and proper under the Act.

Dated at Washington, D. C., this 5th day of March 1943.

NATIONAL LABOR RELA-
TIONS BOARD
By /s/ ERNEST A. GROSS

Associate General Counsel

[Endorsed]: Filed Mar. 10, 1943. Paul P.
O'Brien, Clerk.

[Title of Circuit Court of Appeals and Cause.]

STATEMENT OF POINTS ON WHICH
RESPONDENT INTENDS TO RELY

Comes now Lettie Lee, Inc., respondent in the above proceeding, and in conformity with the revised rules of this Court, hereby states the following points as those on which it intends to rely:

1. That the Board's findings of fact are not supported by substantial evidence.
2. That the Board's conclusions of law are not supported by the findings of fact.
3. That the Board's conclusions of law are not supported by the evidence.
4. That the Board's conclusions of law are contrary to law.
5. That the Board's conclusions of law are contrary to law and the evidence.
6. That the Board's order is not supported by the findings of fact.
7. That the Board's order is not supported by the conclusions of law.
8. That the Board's order is not supported by the evidence.
9. That the Board's order is contrary to law and the evidence.
10. That the Board's finding that respondent has engaged and/or is engaging in unfair labor practices within the meaning of Section 8 (1), (3) and (5) of the Act is not supported by the evidence and is contrary to law.

11. That the Board's order is wholly void and improper and in excess of the jurisdiction of the Board.

Dated: Los Angeles, California, March 17, 1943.

SAM WOLF & LEO SHAPIRO

By LEO SHAPIRO

Attorneys for Respondent

Lettie Lee, Inc.

[Endorsed]: Filed March 18, 1943. Paul P.
O'Brien, Clerk.

[Title of Circuit Court of Appeals and Cause.]

STIPULATION RE EXHIBITS

It Is Hereby Stipulated and Agreed by and between the attorneys for the above named parties that in lieu of printing Board Exhibits Nos. 15-A, B, C, & D, in the record, the Board will submit 5 photostatic copies thereof, and

It Is Further Stipulated and Agreed that these exhibits although not printed shall be deemed part of the record before the Court and may be considered by the Court and referred to by the parties with the same force and effect as though printed and that either party shall have the right to have the said exhibits printed and included in the printed record in the event that appeal is later taken.

Dated at Washington, D. C., this 5th day of March 1943.

ERNEST A. GROSS

Associate General Counsel National Labor Relations Board

Dated at Los Angeles, California, this 19 day of March 1943.

SAM WOLF & LEO SHAPIRO

By LEO SHAPIRO

Attorneys for the Respondent
Lettie Lee, Inc.

So Ordered:

CURTIS D. WILBUR

Senior United States Circuit Judge

[Endorsed]: Filed Mar. 30, 1943. Paul P. O'Brien, Clerk.

